Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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December 8, 1994

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QUESTIONS PRESENTED

1. Whether a United States bankruptcy court can abstain under 28 U.S.C. § 1334(c)(1) from determining an objection to a proof of claim notwithstanding the mandate of 11 U.S.C. § 502(b) that the court "shall determine" such an objection after notice and a hearing?
2. Does the filing of a proof of claim in a bankruptcy proceeding constitute a waiver by a creditor of its right to request a bankruptcy court to abstain from adjudicating an objection to its proof of claim under 28 U.S.C. § 1334(c)(1)?
3. Does the Due Process Clause of the Fifth Amendment require that a debtor be afforded an opportunity to be heard before his bankruptcy petition is found to have been filed in bad faith?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were petitioner Ulpiano Unanue-Casal, a/k/a Charles Unanue ("Petitioner"), Gerardo A. Quiros-Lopez, trustee of Petitioner's estate in bankruptcy ("Trustee Quiros-Lopez") and respondents Goya Foods, Inc., Goya de Puerto Rico, Inc. (Goya Foods, Inc. and Goya de Puerto Rico, Inc. are collectively referred to as the "Goyas"), Zolmar Realty Corp., Interamericas Advertising, Island Can Corporation, Tradewind Foods, Inc., Inter-Americas Advertising Corp., CPR Limited, Condimentos de Puerto Rico, Inc., Industrial Enterprises, Inc., Joseph A. Unanue and Frank Unanue (all respondents are collectively referred to as "Respondents").

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the First Circuit entered on August 5, 1994.

OPINIONS BELOW

The opinion and judgment of the Court of Appeals for the First Circuit entered on August 5, 1994 has not been reported and is reprinted in the appendix hereto, p. 1a, *infra*. The order of the Court of Appeals denying Petitioner's petition for rehearing entered on September 8, 1994 has not been reported and is reprinted in the appendix hereto, p. 19a, *infra*.

The opinion and judgment of the district court filed on December 14, 1993 is reported at 164 B.R. 216 (D.P.R. 1993) and is reprinted in the appendix hereto, p. 3a, *infra*.

The opinion and order of the bankruptcy court entered on November 20, 1992 has not been reported and is reprinted in the appendix hereto, p. 20a, *infra*.

JURISDICTION

On August 29, 1990, Petitioner filed his petition for bankruptcy with the Clerk of the United States Bankruptcy Court for the District of Puerto Rico invoking federal jurisdiction under 28 U.S.C. § 1334(a).

On November 20, 1992, the bankruptcy court denied Respondents' motion for it to abstain from determining the objection of Petitioner and Trustee Quiros-Lopez to the proofs of claim voluntarily filed by the Goyas.

Respondents appealed the bankruptcy court's opinion and order to the district court under 28 U.S.C. § 158(a). On December 13, 1993, the district court reversed the bankruptcy court.

Petitioner appealed the district court's opinion and judgment to the First Circuit under 28 U.S.C. § 158(d) and 28 U.S.C. § 1291. The First Circuit affirmed the district court on August 5, 1994 and denied Petitioner's petition for rehearing on September 8, 1994.

The jurisdiction of this Court to review the opinion and judgment of the First Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

11 U.S.C. § 502. Allowance of claims or interests

> (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.
>
> (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hear-

ing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . . .

28 U.S.C. § 1334. Bankruptcy cases and proceedings

* * * *

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

U. S. Const. amend. V

No person shall be . . . deprived of life, liberty, or property, without due process of law . . . .

STATEMENT OF THE CASE

For over 25 years, Petitioner has been engaged in an epic, bitter and all encompassing dispute with his father and brothers arising out his exposure of a massive tax fraud scheme perpetrated by his brothers involving unreported corporate profits of approximately $3,000,000. The dispute has been litigated in various forums throughout the United States and, since 1987, has focused exclusively on Petitioner's claim to inherit his share of his parents' estates. These estates are currently valued by Petitioner to be in excess of $300,000,000.

Prior to 1969, Petitioner, his father and his brothers were the shareholders, officers and directors of Goya Foods, Inc. and Petitioner and his brothers were the shareholders, officers and directors of Goya de Puerto Rico, Inc.'s predecessor corporations, Puerto Rico Food Products Corporation and Caribbean Canneries, Inc. However, in June 1969, after Petitioner's public disclosure of his brothers' tax fraud scheme, his father and brothers voted to discharge him as an officer, director and employee of the corporations. Thereafter, extensive litigation ensued.

Goya Foods, Inc. subsequently paid additional federal income taxes, interest and fraud penalties totalling in excess of $200,000. The litigation was settled by an agreement dated June 9, 1972 ("1972 Agreement") between Petitioner, Goya Foods, Inc., Puerto Rico Food Products Corporation, Caribbean Canneries, Inc. and other family owned corporations and a partnership ("Buyers"). The 1972 Agreement was executed and performed in Puerto Rico. Pursuant to its terms, Petitioner sold his interests in the Buyers back to them for $4,500,000 over time, subject to adjustment and acceleration based on a public offering of Petitioner's interests in the Buyers that was to take place within the following two years.

In 1973, Petitioner alleged that the Buyers and his brothers breached the 1972 Agreement by canceling the 1,250 non-voting shares of Goya Foods, Inc. owned by Caribbean Canneries, Inc. which effectively reduced his potential public offering adjustment. As a result, Petitioner served a notice of default and Goya Foods, Inc. filed suit in New York for a judgment declaring that no default had taken place.

The declaratory judgment action was settled by the execution of an amendment to the 1972 Agreement dated July 31, 1974 ("1974 Amendment") between Petitioner and the Buyers. It was executed and performed in Puerto Rico.

Pursuant to the 1974 Amendment, Petitioner agreed to: (1) the cancellation of the 1,250 non-voting shares of Goya Foods, Inc.; (2) the cancellation of the public offering; (3) a waiver of his future inherritance from his father; (4) restrictions on any interest in the Buyers he might obtain or inherit in the future from others; (5) a $200,000 reduction in the sales price; and (6) a penalty clause of twice the attorneys fees and costs to be paid by any signatory of the 1974 Amendment that loses an action against any other signatory ("Penalty Clause").

Petitioner's father died in 1976. During the last five years and four months of his life, Petitioner's father resided in and did not leave Puerto Rico. Petitioner estimates that the value of his father's estate prior to his death, which included an undivided one-half interest in voting control of Goya Foods, Inc., was approximately $35,000,000. The executors of his father's estate were respondents Joseph A. Unanue and Frank Unanue, Petitioner's then surviving brothers. They reported their father's estate for federal and state tax purposes to be valued at approximately $1,493,000.

Petitioner's mother died in 1984, at which time Petitioner fully expected to inherit one fourth of her estate, which included an undivided one-half interest in voting control of Goya Foods, Inc., pursuant to the terms of her will. Petitioner estimates that the value of his mother's estate at her death was approximately $100,000,000. Her executors, respondents Joseph A. Unanue and Frank Unanue, reported her estate for federal and state tax purposes to be approximately $30,000.

In 1987, Petitioner discovered this his waiver of his right to inherit from his father's estate was void under the laws of Puerto Rico, the jurisdiction in which Petitioner was domiciled, in which the 1974 Amendment was executed and performed and in which, according to Petitioner's contention, his father was also domiciled. Therefore, Petitioner served a demand upon his brothers for his fair and just share of both estates.

In response to Petitioner's demand, the executors commenced an action in New Jersey seeking a declaratory judgment that Petitioner was not entitled to inherit from his father. Shortly thereafter, Petitioner commenced an action in Puerto Rico seeking his inheritances from his parents and aunt, all of whom Debtor contended died domiciled in Puerto Rico.

In 1988, Petitioner filed a complaint in Puerto Rico contesting the validity of the 1972 Agreement as

amended by the 1974 Amendment. Thereafter, Goya Foods, Inc. continued the jurisdictional war by filing a complaint against Petitioner as an intervenor in the New Jersey action seeking a declaratory judgment that the agreements were valid. The two Puerto Rico actions were subsequently consolidated and stayed pending completion of a plenary hearing in the New Jersey action to determine the domicile of Petitioner's father on the date that he executed his will and trust and on the date of his death. All other aspects of the New Jersey action were also stayed pending the plenary hearing. The testimonial phase of the hearing required 171 trial days.

On August 29, 1990, Petitioner filed a voluntary petition for bankruptcy in the United States District Court for the District of Puerto Rico. Thereafter, the bankruptcy court became the central arena for the continued struggle among the Unanue brothers.

On October 29, 1990, each of the Goyas voluntarily filed proofs of claim in Petitioner's bankruptcy proceeding. The original proof of claim filed by Goya Foods, Inc. seeks an "estimated" $4,000,000 for attorneys fees based upon the Penalty Clause. (App. at 33).[1] The original proof of claim filed by Goya de Puerto Rico, Inc. seeks an "estimated" $2,000,000 for attorneys fees based upon the Penalty Clause as well. (App. at 41). Their amended proofs of claim increase their "estimated" claims to $15,000,000 and $5,000,000, respectively. (App. at 317 and 318).

Petitioner and Trustee Quiros-Lopez objected to all of the Goyas' proofs of claim because:

1. The claims were fraudulent and overstated.
2. The Goyas refused to provide evidence to substantiate the amounts that they allegedly paid as attorneys fees.

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[1] All "App." references are to the appendix filed by Petitioner in the First Circuit.

3. The claims included payments by the Goyas to attorneys who represented clients who were not signatories to the 1974 Amendment.

4. The claims included pre and post petition attorneys fees.

5. The claims included estimated, anticipated future attorneys fees.

6. The claims were contingent and unmatured and should be liquidated by the bankruptcy court in order to afford Petitioner complete relief.

7. The Penalty Clause upon which the claims were based is void as against the public policy of Puerto Rico and, if applicable, New York.

On February 6, 1991, the bankruptcy court modified the automatic stay to permit the New Jersey court to conclude the plenary hearing to determine the domicile of Petitioner's father, but denied the motion by the Goyas and others to lift the stay on the remaining aspects of the New Jersey action which had not yet commenced.

On September 24, 1991, the bankruptcy court consolidated the objection to the Goyas' proofs of claim of Petitioner and Trustee Quiros-Lopez with a fraudulent transfer adversary proceeding and directed that Petitioner file the objection as a permissive counterclaim in that action. The counterclaim also reasserted Petitioner's claims to his inheritances and the invalidity of the 1974 Amendment.

On December 4, 1991, the New Jersey court issued an opinion concluding that Petitioner's father was domiciled in New Jersey notwithstanding 48 U.S.C. § 733a, which provides that "[a]ll citizens of the United States who have resided [in Puerto Rico] for one year shall be citizens of Puerto Rico." The Goyas and others responded to this decision by again asking the bankruptcy court to lift the automatic stay to permit the New Jersey action to proceed. On May 15, 1992, the motion was denied and, thereafter, the movants appealed to the district court.

On November 20, 1992, in an effort to move the bankruptcy proceeding to a swift conclusion, the bankruptcy court severed for trial the limited core issue of the objection to the Goyas' proofs of claim for the following reasons:

> 1. We may avoid resolving intricate issues of jurisdiction and determinations of whether all causes of actions raised in the complaint and the amended counterclaim are core or "non-core".[3]
>
> 2. Whether we rule in favor or against the objections, the ruling would afford both the bankruptcy court and the Trustee a swift and economical way of liquidating this Chapter 7 case. Hence, judicial resources are conserved by this severance in suits which thus far have engendered litigation on constitutional questions posed by *Connecticut v. Doehr*, and a myriad of preliminary requests including such arcane matters as issuance of letters rogatory to allow attachments, etc., of assets purportedly located in Great Britain and Switzerland. [Footnote omitted]. These are but a presage of what is to come.
>
> In sum, irrespective of the outcome, resolving the objection to the Goyas' claims ahead of other issues raised in the consolidated amended adversary complaints and the amended counterclaim, provides the best solution to this bankruptcy case. [pp. 23a-24a, *infra*].

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[3] The consolidated adversary complaints filed in this case seek not only to avoid alleged fraudulent transfers, but also seek a denial of discharge.

The bankruptcy court then considered and denied Respondents' motion for it to abstain under 28 U.S.C. § 1334(c)(1) and (2). It summarized its rulings as follows:

> 1. We sever the amended counterclaim's "First Claim for Relief", and within that First Claim for Relief, we sever the issue of whether the Goyas'

proofs of claims filed in this case should be denied together with those portions of the preliminary motions addressing the Bankruptcy Court's lack of jurisdiction and need to abstain in this proceeding.

2. We stay all other causes of actions together pending discovery in the captioned adversary proceeding.

3. The Goyas' Motion to Dismiss the severed issue for lack of subject matter jurisdiction is denied, as well as their request calling on us to exercise discretionary abstention to allow the New Jersey Court to decide the severed issue.

4. The pretrial hearing scheduled for December 1, 1992 before the undersigned remains in full force and effect *with respect to the severed issue only.* [p. 32a, *infra*].

In its opinion and order entered on December 2, 1992 denying Respondents' motion for a stay pending their appeal to the district court, the bankruptcy court reaffirmed that the only issue that had been severed for trial was the objection by Petitioner and Trustee Quiros-Lopez to the Goyas' proofs of claim. It stated:

> [W]e have *not* severed the issue of whether the entire 1974 Amendment or all of the claims for relief asserted by Debtor in the Amended Counterclaim are valid under state law . . . . [App. at 1020 (emphasis added)].

Thereafter, discovery was exchanged, although the Goyas refused to provide original unredacted documents to support their proofs of claim. The original June 23, 1993 trial date was adjourned by the bankruptcy court to September 20, 1993.

On August 3, 1993, the district court reversed the bankruptcy court's denial of the motion to lift the automatic stay. In doing so, it evidenced a striking bias against Petitioner when it *sua sponte* made vital factual

findings without evidentiary support and without affording Petitioner the opportunity to present evidence. *See In re Unanue-Casal,* 159 B.R. 90, 99-102 (D.P.R. 1993). Specifically, the district court concluded based upon the unsworn statements of the movants' attorneys in their briefs and at oral argument that it was "common knowledge" that the [Petitioner] is not bankrupt," *id.* at 99, and that he "acted in bad faith when he filed for bankruptcy", *id.* at 102, even though the bankruptcy court had found based upon the factual record before it that there was no evidence of misconduct on the part of Petitioner, *id.* at 99 n.20. The district court's reversal was appealed by Petitioner to the First Circuit and affirmed on May 12, 1994.

After it received notice of the district court's action, the bankruptcy court adjourned the September 20, 1993 hearing without a new date.

In its opinion and judgment filed on December 15, 1993, the district court reversed the bankruptcy court's abstention decision and abstained from determining the objection to the proofs of claim under both 28 U.S.C. § 1334(c)(1) and (2). Its jurisdictional analysis was apparently result oriented and again driven by its unyielding perception that Petitioner's bankruptcy was a "manipulation of the judicial system" and a "sham". *See* p. 16, *infra.* In fact, its opinion commences with its assertion that it is reversing the bankruptcy court *"because* we remain convinced that [Petitioner's] bankruptcy action is a ruse designed to frustrate the legitimate rights of his adversaries." P. 4a, *infra* (emphasis added).

On August 5, 1994, the First Circuit affirmed the district court's abstention under 28 U.S.C. § 1334(c)(1), thereby recognizing that the determination of an objection to a proof of claim is a core proceeding. On September 9, 1994, the First Circuit denied Petitioner's petition for rehearing.

Although Trustee Quiros-Lopez has refused to represent Petitioner's estate in the New Jersey action, it is proceeding. However, notwithstanding the district court's abstention in favor of the New Jersey court to determine the objection of Petitioner and Trustee Quiros-Lopez to the Goyas' proofs of claim, that court has not, and will not, undertake the determination of this issue.

REASONS FOR GRANTING THE WRIT

11 U.S.C. § 502(b) is a congressional mandate to the bankruptcy court to conclusively determine an objection to a proof of claim voluntarily filed in a bankruptcy proceeding. This section is consistent with previous rulings of this Court explaining that a creditor, by filing a proof of claim, has consented to the broad equitable jurisdiction of the bankruptcy court to fully and completely determine proofs of claim. *See Langenkamp v. Culp,* 498 U.S. 42, 44 (1990); *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 58-59 (1989); *Katchen v. Landy,* 382 U.S. 323, 329 (1966). Given these precedents, and the obligatory congressional directive of 11 U.S.C. § 502(b), it is apparent that a bankruptcy court cannot abstain from fulfilling its obligation to determine an objection to a voluntarily filed proof of claim.

The First Circuit's affirmance of the district court's abstention carves out, without congressional authorization, an entirely new exception to bankruptcy jurisdiction based upon its erroneous conclusion that a determination of an objection to a proof of claim can somehow be adjudicated in a state court proceeding. The court's decision results in the anomaly of a bankruptcy court being prohibited from adjudicating a federal issue (in direct contravention of its statutory duty under 11 U.S.C. § 502(b)) by abstaining under a statutory provision primarily concerned with comity and respect for state law (28 U.S.C. § 1334 (c)(1)). This case presents an important issue of the interpretation and interaction of two federal statutes in

the context of an erroneous ruling by the First Circuit that serves to distort the already clouded parameters of the bankruptcy court's legitimate area of jurisdiction. In this context, the need for this Court to provide authoritative guidance is apparent.

I. THIS COURT SHOULD GRANT THE WRIT TO UPHOLD CONGRESS' CLEAR INTENT THAT THE BANKRUPTCY COURT "SHALL DETERMINE" OBJECTIONS TO PROOFS OF CLAIM.

The Bankruptcy Amendments and Federal Judgeships Act of 1984 ("Act") was designed to cure the constitutional infirmities of the Bankruptcy Code of 1978 by dividing the bankruptcy court's jurisdiction into "core" proceedings, over which the bankruptcy court exercises full judicial power, and "non-core" proceedings, over which the bankruptcy court's power is severely limited. The Act was not designed to limit or deny the bankruptcy court's jurisdiction in the area central to its traditional and essential function within the federal system; namely, granting debtors a "fresh start" through the claims allowance process.

11 U.S.C. § 502(b) embodies Congress' recognition of the importance of claims allowance in a bankruptcy proceeding. It provides that, once an objection to a proof of claim is filed, the bankruptcy court "shall determine the amount of such claim . . . ." Congress' use of the word "shall" is not ambiguous. "Shall" is used in a law or regulation to "express what is mandatory". Websters Ninth Collegiate Dictionary 1081 (1989). Thus, Congress has conclusively directed that bankruptcy courts *must* determine objections to proofs of claim.

This statutory interpretation is consistent with previous rulings of this Court emphasizing the central role of claims allowance in the bankruptcy process. Thus, in *United States Fidelity and Guarantee Co. v. Bray*, 225 U.S. 205 (1912), this Court held that "[t]he jurisdiction

of the bankruptcy courts in all 'proceedings in bankruptcy' is intended to be exclusive of all other courts, and . . . such proceedings include, among others, all matters of administration, such as allowance, rejection and consideration of claims . . . ." *Id.* at 217. More specifically, "[w]hen objections are made, [the bankruptcy court] is *duty bound* to pass on them." *Gardner,* 329 U.S. 572, 573 (1947) (emphasis added). *See Katchen,* 382 U.S. at 329.

At least two Courts of Appeals have similarly recognized the vital importance of claims allowance and, in particular, determinations of objections to proofs of claim, to the successful administration of a bankruptcy proceeding. The Second Circuit has held that "the determination of an objection to a proof of claim . . . is clearly at the core of the federal bankruptcy function of restructuring debtor-creditor rights, implicating the unique powers of bankruptcy courts." *In re Manville Forest Products Corp.,* 896 F.2d 1384, 1390 (2. Cir. 1990). The Fifth Circuit has similarly explained that the determination of an objection to a proof of claim is an administrative proceeding that, by its very nature, can *only* arise in the context of a bankruptcy case. *See In re Wood,* 825 F.2d 90, 96-97 (5th Cir. 1987). It cannot exist outside of bankruptcy.

District courts have also recognized the mandatory obligation to determine objections to proofs of claim. Bankruptcy courts "*must* determine the legal sufficiency of a claim alleged to be defective and, under 11 U.S.C. § 502, *must* either disallow the claim or determine the amount to be allowed under the claim." *In re Circle J. Dairy, Inc.,* 112 B.R. 297, 300 (W.D. Ark. 1989) (emphasis added).

The mandatory nature of the word "shall" in 11 U.S.C. § 502(b) is also supported by case law interpreting 11 U.S.C. § 502(c)(1), which provides that the bankruptcy court "shall" estimate contingent or unliquidated claims to avoid undue delay in the administration of the case.

"Section 502(c) is a mandate to the [bankruptcy] court to estimate a claim when liquidation is impractical or would unduly delay the proceedings." *In re Nova Real Estate Investment Trust,* 23 B.R. 62, 65 (E.D. Va. 1982). Under such circumstances, the court is duty bound to estimate these claims. *In re Towner Petroleum Co.,* 48 B.R. 182, 187 (W.D. Okl. 1985); *Nova,* 23 B.R. at 65.

The same interpretation should hold true in the context of 11 U.S.C. § 502(b). It is a mandatory direction to the bankruptcy court which must be fulfilled.

The decision of the First Circuit not only conflicts with the decisions of this Court referenced above, but also with decisions from the Second and Fifth Circuits recognizing the jurisdictional significance of the filing of a proof of claim and the bankruptcy court's affirmative duty to determine objections to such claims. The effective administration of the Bankruptcy Code depends upon the bankruptcy court's ability to fashion far reaching and complete relief to debtors. The First Circuit's decision strips the bankruptcy court of this power and stands as erroneous precedent likely to cause further confusion in the lower federal courts. The need for this Court to conclusively establish the jurisdictional parameters of 11 U.S.C. § 502(b) is essential.

II. THIS COURT SHOULD GRANT THE WRIT TO DETERMINE THE CONCLUSIVE JURISDICTIONAL EFFECT OF A CREDITOR'S VOLUNTARY FILING OF A PROOF OF CLAIM.

The equitable power of the bankruptcy court to conclusively determine an objection to a proof of claim is initiated by the creditor's voluntary submission to the bankruptcy court's jurisdiction by filing a proof of claim. *Langenkamp,* 498 U.S. at 44 (citing *Granfinanciera,* 492 U.S. at 57-58). A putative creditor is not required to file such a claim. However, after having done so, the

creditor fully submits to the court's jurisdiction and "must abide the consequences of that procedure." *Gardner*, 329 U.S. at 573 (citing *Wiswall v. Campbell*, 93 U.S. 347 (1876). Stated differently, after having filed a proof of claim seeking a part of the bankruptcy estate, the creditor can no more seek to remove its claim from the bankruptcy court's jurisdiction than the court can ignore its statutory duty to determine the objection to the proof of claim under 11 U.S.C. § 502(b). The decision of the First Circuit countenances both.

The jurisdictional significance of the voluntary filing by a creditor of a proof of claim has been repeatedly recognized by this Court. *See Granfinanciera*, 492 U.S. at 58-60. Thus, a creditor's right to a jury trial on a trustee's preference claim depends "upon whether the creditor has submitted a claim against the estate . . . ." *Granfinanciera*, 492 U.S. at 58. Here, a similar distinction must be drawn with reference to a creditor's right to request discretionary abstention under 28 U.S.C. § 1334(c)(1). A creditor who has affirmatively placed his claim, whether liquidated or unliquidated, within the bankruptcy court's expansive equitable power is in an entirely different position than a defendant in an adversary proceeding initiated by a bankruptcy trustee, as was the case in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). The former subjects himself to the essential and mandatory claims allowance process of the bankruptcy court, while the latter retains the right to object to the determination of the disputed issue in the bankruptcy proceeding.

The First Circuit decision ignores this important distinction, just as it does the decisions of this Court holding that by filing a proof of claim, a creditor submits to the jurisdiction of the bankruptcy court and its broad equitable power to allow or disallow claims asserted against the bankruptcy estate. The First Circuit decision thus creates confusing precedent at odds with prior decisions of this Court and the clear intent of Congress.

III. THIS COURT SHOULD GRANT THE WRIT BECAUSE THE FIRST CIRCUIT'S DECISION RAISES IMPORTANT AND UNRESOLVED ISSUES CONCERNING THE SCOPE OF DISCRETIONARY ABSTENTION UNDER 28 U.S.C. § 1334(c)(1).

Since *Marathon* and the passage of the Act, lower federal courts have unsuccessfully attempted to define a clear, understandable delineation of the scope of the bankruptcy court's jurisdiction. The First Circuit's erroneous application of the discretionary abstention doctrine is a reflection of this confusion and another reason why clear guidance from this Court is warranted.

28 U.S.C. § 1334(c)(1) provides that "[n]othing in this section prevents a district court . . . from abstaining from hearing a particular" core proceeding. Thus, the bankruptcy court is invested with discretion to abstain from hearing a core proceeding in the interest of justice *unless* it is otherwise prevented from doing so by another section of the Bankruptcy Code.

As previously noted herein, bankruptcy courts are duty bound by 11 U.S.C. § 502(b) to determine objections to proofs of claim. Therefore, this section constitutes an absolute bar to the exercise of discretion under 28 U.S.C. § 1334(c)(1) to abstain from determining objections.

Indeed, this is the logical interpretation of the interaction of the two statutes given the fact that objections to proofs of claim only exist in bankruptcy proceedings. There is, therefore, no other forum that the bankruptcy court can abstain in favor of. *See Wood*, 825 F.2d at 97.

The First Circuit's decision fails to recognize the preclusive effect of 11 U.S.C. § 502(b)'s mandate on the court's discretionary power to abstain under 28 U.S.C. § 1334(c)(1). In so doing, the First Circuit has condemned the objection to the Goyas' proofs of claim into legal limbo, where it can never be resolved. Given the importance of the interaction of these two federal statutes,

the need for conclusive guidance from this Court is essential.

IV. THIS COURT SHOULD GRANT THE WRIT BECAUSE THE DUE PROCESS CLAUSE REQUIRES THAT A HEARING BE HELD BEFORE A DEBTOR IS FOUND TO HAVE FILED A BANKRUPTCY PETITION IN BAD FAITH.

On two separate occasions, the First Circuit has affirmed decisions driven by the district court's unfounded factual perceptions and *sua sponte* conclusions regarding the integrity of Petitioner's bankruptcy filing. In the first instance, the district court posited, when adjudicating the motion to lift the automatic stay, that it was "common knowledge that the [Petitioner] is not bankrupt", *Unanue-Casal,* 159 B.R. at 99, and that he "acted in bad faith when he filed for bankruptcy", *id.* at 102. The evidentiary source of this common knowledge was not revealed nor contained within the bankruptcy court record which was before the district court. On the second occasion, the First Circuit affirmed the district court's abstention decision, which was based upon the equally irrelevant and factually unsupported conclusion that Petitioner's bankruptcy is "a ruse designed to frustrate the legitimate rights of his adversaries." P. 4a, *infra.*

While Petitioner recognizes that the jurisdiction of this Court is rarely invoked solely to remedy an injustice perpetrated on a single litigant, the First Circuit's action in this case implicates broader principles of constitutional law in that it countenances a decision making process at odds with the Fifth Amendment's guarantee of due process. It stands for the untenable and constitutionally repellent proposition that a district judge can adjudicate a litigant a sham bankrupt without affording that litigant a hearing or any opportunity to be heard. Given the magnitude of the estate involved in this case, and the importance of affirming the vitality of the Due Process Clause within the bankruptcy arena, the jurisdiction of this Court to right this particular wrong should be invoked.

The Bankruptcy Code provides that a debtor "shall" be granted a discharge unless he engages in certain specifically delineated wrongful conduct, such as false swearing or presenting a false claim. 11 U.S.C. § 727(a)(4)(A) and (B). While this Court has held that a debtor has no constitutional or fundamental right to a discharge in bankruptcy, *United States v. Kras*, 409 U.S. 434, 445-46 (1991), he does have a right and legitimate expectation that the procedures utilized within a bankruptcy proceeding conform to accepted notions of fair play and due process. The Bankruptcy Rules embody this principle by outlining procedures which must be followed before a debtor's petition can be dismissed for wrongful conduct, *see* Fed. R. Bankr. P. 1017(e), as do prior decisions of this Court addressing the standard of proof that a defrauded creditor must satisfy in order to avoid dischargeability, *see Grogan v. Garner*, 498 U.S. 279 (1991). Petitioner is thus entitled, at a bare minimum, to an opportunity to be heard, *see Goldberg v. Kelly*, 397 U.S. 254 (1970), and the opportunity to present his case to a fair, neutral and detached judge, *see Ward v. Village of Monroeville*, 409 U.S. 57, 61-62 (1972). This is the basic principle of fairness inherent in the Due Process Clause.

Here, Petitioner faces the very real prospect of his bankruptcy petition being dismissed by virtue of the collateral estoppel effect of the district court's pronouncements regarding the veracity of his actions. *See Grogan*, 498 U.S. at 763 n.11. Although these conclusions represented nothing more than the district court's divination of "common knowledge", they have nonetheless infected the record and are repeatedly utilized by Respondents to cast doubt on Petitioner's credibility in each proceeding and forum. Thus, Petitioner has been placed in the position where concrete factual determinations manufactured by the Court at the suggestion of Respondents work to repeatedly prejudice the outcome of each and every legal issue and proceeding in which Petitioner is a party. The district court's conclusive pronouncements have been re-

peated so often that they have taken on the patina of authenticity and, like a virulent rumor, are accepted as fact.

Given the multiplication of error caused by the district court's unyielding negative perception of the accuracy of Petitioner's bankruptcy petition, the intervention of this Court is appropriate and required to affirm that a bankruptcy proceeding does not comport with due process when the unsubstantiated becomes fact, when bias infects the record and when Petitioner is denied the opportunity to rebut a factual finding of misconduct. Here, the district court has concluded, and the First Circuit has affirmed, a determination of a bad faith bankruptcy filing without Petitioner being afforded any opportunity to present factual testimony to the court regarding this issue. This case is thus analogous to criminal prosecutions reviewed by this Court when the evidence against the accused was so lacking that the entire proceeding raised important constitutional questions of due process. *See Thompson v. City of Louisville*, 362 U.S. 199 (1960).

Accordingly, the jurisdiction of this Court should be invoked to right a particular injustice and to conclusively provide guidance to the lower federal courts regarding the proper exercise of a bankruptcy court's jurisdiction to fully and completely determine an objection to a proof of claim.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the Court of Appeals of the First Circuit.

Respectfully submitted,

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December 8, 1994

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APPENDIX

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-1065

GOYA FOODS, INC., *et al.*,

Appellees,

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,

Appellant.

Appeal from the United States District Court
for the District of Puerto Rico

[Hon. Gilberto Gierbolini, *U.S. District Judge*]

Before

Selya, *Circuit Judge*,
Coffin and Bownes, *Senior Circuit Judges*

August 5, 1994

Per Curiam. We have reviewed the record and the parties' briefs in the case. Essentially for the reasons stated by the district court in its opinion, *Goya Foods* v. *Unanue-Casal* (*In re Unanue-Casal*), 164 B.R. 216, 222-23 (D.P.R. 1993), we find that the bankruptcy court abused its discretion in declining to abstain pursuant to 28 U.S.C. § 1334(c)(1).

Affirmed. See 1st Cir. Loc. R. 27.1.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-1065

GOYA FOODS, INC., *et al.*,
Appellee

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Appellant

JUDGMENT

Entered: August 5, 1994

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Puerto Rico.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court

/s/ Francis P. Scigliano
Clerk

[Filed Dec. 15, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,

Debtor

Civil No. 92-2909(GG)

GOYA FOODS, INC.; GOYA DE PUERTO RICO, INC.; ZOLMAR REALTY CORP.; INTERAMERICAS ADVERTISING; ISLAND CAN CORPORATION; TRADEWINDS FOODS, INC.; INTER-AMERICAS ADVERTISING CORP.; CPR INTERNATIONAL, INC.; CPR INTERNATIONAL LIMITED; CONDIMENTOS DE PUERTO RICO, INC.; INDUSTRIAL ENTERPRISES, INC.; JOSEPH A. UNANUE; FRANK UNANUE,

Appellants

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Debtor, and GERARDO QUIROS-LOPEZ,
Chapter 7 Trustee,

Respondents

Every happy family is alike, but every unhappy family is unhappy in its own way.

Tolstoy, Anna Karenina

OPINION AND ORDER

Before this court is yet another chapter in the epic struggle of the alleged [1] debtor to escape the consequences

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[1] Even though it appears more likely than not that the bankruptcy action is a sham, we shall for the sake of brevity refer to appellee as debtor, and not as alleged debtor, for the remainder of this OPINION.

of his prior actions and decisions. In a related action involving the same parties, *In re Unanue-Casal,* 159 B.R. 90 (D.P.R. Aug. 3 1993), we decided in favor of the appellants above. We do so again, because we remain convinced that debtor bankruptcy action is a ruse designed to frustrate the legitimate rights of his adversaries.

The instant matter involves a similar appeal from the bankruptcy court. We come to essentially the same conclusion that we reached in the earlier matter: that debtor's attempts to circumvent the action already pending in New Jersey must not succeed. Since the Bankruptcy court's holdings were clearly erroneous we reverse the order of non-abstention [2] so that the validity of the contracts attacked in debtor's counterclaim may be sent to New Jersey where it belongs for a resolution that will hopefully assist in terminating the Puerto Rican proceedings in this case. In order to understand what has happened so far, a brief synopsis of our previous decision is helpful: [3]

Charles Unanue (Debtor or Charles) filed a bankruptcy petition under Chapter 7 on August 29, 1990 in this District, after litigating for almost three years in the New Jersey Superior Court. The bankruptcy filing automati-

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[2] The decision of a bankruptcy court not to abstain from deciding a matter before it under 28 U.S.C. § 1334(c) is appealable as of right immediately to a district court. See, e.g., *In re Holtzclaw,* 131 B.R. 162, 163 (E.D.Cal. 1991). Appellee apparently does not disagree. Whether or not the bankruptcy court's decision not to abstain is decided under either the doctrine of mandatory or discretionary abstention is irrelevant. *In Re Mec Steel Bldgs, Inc.,* 136 B.R. 606, 610 (D.P.R. 1992) ("a motion for abstention is a contested matter upon which the bankruptcy court has the authority to enter a final order subject to appeal"). "A bankruptcy order need not dispose of all aspects of a case to be final; an order which disposes of a 'discrete dispute within the larger case' will be considered final and appealable." *In Re Unanue-Casal,* 144 B.R. 604, 608 (D.P.R. Aug. 7, 1992).

[3] For the full tale readers are referred to *In Re Unanue-Casal,* 159 B.R. 90 (D.P.R. Aug. 3 1993).

cally stayed the New Jersey action. The bankruptcy court denied Appellants relief from this stay on May 15, 1992, finding that they had not presented sufficient evidence of "cause" to warrant lifting the stay. On August 3, 1993, we held that the bankruptcy court erred when it found that the Appellant had not presented evidence of "cause", and in doing so abused its discretion in denying relief from the stay. We then reversed the bankruptcy court's order and granted appellants relief from the stay.

These proceedings have sprouted from a long and bitter dispute between the sons of Prudencio Unanue, (Prudencio) the founder of Goya, a manufacturer of foods directed predominantly at the Latino market. Don Prudencio and his wife, doña Carolina, were married in Puerto Rico on November 4, 1921; Prudencio was domiciled in New York and doña Carolina was domiciled in San Lorenzo, Puerto Rico. They had four sons: Charles, the debtor in the instant action, Joseph, Anthony (deceased) and Frank Unanue. Soon after their marriage, Prudencio returned to New York where doña Carolina joined him in 1923. By 1929, the Unanue's had moved to New Jersey where they would live and work until 1970.

On November 16, 1970, Prudencio executed his last will and testament and a revocable *inter vivos* trust in New York. He died in 1976, and after his death, the Trustees (Joseph and Frank Unanue) probated, administered and distributed his will. In 1986, the Superior Court in New Jersey approved a First Accounting filed by the trustees, and contested by C. Jeffrey Unanue, one of Charles' sons. At that time, several of the Beneficiaries received their share of the trust, in accordance with the trust's provisions. *See Unanue Casal v. Unanue Casal*, 132 F.R.D. 146, 148 (D.N.J. 1989), aff'd 898 F.2d 839 (1st Cir. 1990).

In 1969, prior to Prudencio's death in 1976, a dispute arose between Charles and his brothers, appellants in the

prior action as well as the instant lawsuit. Prudencio subsequently allied himself with his other sons against Charles.

After this time, Charles has claimed that he has been an innocent victim of his brothers' plottings. This intra-family squabble was temporarily settled on June 9, 1972, with the execution of a settlement, the 1972 Agreement, between the parties. Under this agreement Charles' voting shares in Goya and the other affiliated companies were purchased for $4.5 million. Alas, this peace proved too fragile to last.

In 1973, in what has proved to be a harbinger of the acrimony that now engulfs the parties, Charles alleged that the other signatories to the 1972 Agreement had breached its provisions. To resolve this conflict the 1974 Amendment to the 1972 Agreement was signed on July 31, 1974. As part of the 1974 Amendment, Charles was excluded from sharing in Prudencio's estate, and removed from the family enterprises; in return, Charles received an accelerated payment of $4,300,000. To secure finality, Charles promised never to bring any claim or suit contesting or objecting to don Prudencio's will or trust, and not to interfere with the disposition of assets of stock by Prudencio, his estate, the beneficiaries or his brothers. The Amendment also specified that any signatory who lost a suit "concerning any matter" with another signatory must recompense the prevailing party liquidated damages of doube costs and attorney's fees.

Notwithstanding his prior agreement to the contrary, eleven years after his father's death, in July 1987, Charles decided to challenge his exclusion from his father's estate. On August 13, 1987, Joseph and Frank, as trustees of the 1970 trust, sued Charles, in the Superior Court of New Jersey. They were seeking a declaratory judgment barring Charles from maintaining any claims against don Prudencio's estate and the *inter vivos* trust. Charles responded by filing in New Jersey an amended counterclaim

on June 17, 1988, claiming that both the 1972 Agreement and the 1974 Amendment were invalid. He also claimed a share of the trust corpus.

On August 30, 1988, Charles filed a claim in the Superior Court of Puerto Rico requesting that the 1972 Agreement and the 1974 Amendment be rescinded. This claim was consolidated with a previous 1987 action in the Superior Court of Puerto Rico seeking an inheritance from don Prudencio's, doña Carolina's and Ana María's estate. Finally, Charles filed a bankruptcy petition under Chapter 7 on August 29, 1990, in the District of Puerto Rico—nine days before the close of the trial in New Jersey. The New Jersey proceedings were stayed contemporaneously with the filing of this Bankruptcy petition.

Judge Kole of the New Jersey Superior Court decided on December 4, 1991, *after 171 days of trial*, that don Prudencio was domiciled in New Jersey on the dates in controversy. Appellants filed a second motion for further relief from the stay of the New Jersey proceeding. The bankruptcy court in its May 15, 1992, Opinion again denied relief from the stay, this time because it found the appellant failed to present evidence of "cause" to do so. We heard the arguments on appeal, and after reviewing the evidence and the law, we lifted the stay.

CURRENT PROCEEDINGS

In this action, the appellants contest the bankruptcy court's November 20, 1992 decision refusing to abstain from determining certain issues, namely the validity of the 1972 Agreement and the 1974 Amendment thereto that form part of Charles' counterclaim in the New Jersey action as well as his counterclaim in the bankruptcy action. Appellants are eleven companies, among them Goya Foods, Inc., and Goya de Puerto Rico, Inc., and individuals, notably Joseph and Frank Unanue.

As the New Jersey action commenced, the New Jersey court took exclusive jurisdiction over the estate of Don

Prudencio and the Trust. At the close of the litigation, Charles filed for bankruptcy in this district on August 29, 1990, for the clear purposes of seeking what he perceived to be a friendlier jurisdiction.

Charles' bankruptcy schedule claimed that while he possessed assets of merely nominal worth, he had liabilities of over one million dollars. (Item 3)[4]. It also omitted contingent and disputed claims. Appellants (and this court) find this somewhat incredible, given the assets transferred to Charles over the years of the family dispute and the peculiarity of some of Charles' financial transactions, which appear designed to hide his assets.

In the bankruptcy cases two adversary proceedings were filed against debtor. The first proceeding was designed to deny Charles a discharge of his debts on the ground that he engaged in various forms of misconduct that would bar discharge under 11 U.S.C. § 727, e.g. concealing assets, failing to provide essential financial information, etc. In his response to the complaint objecting to the Chapter 7 discharge, debtor consented to waive his discharge on the ground that he had no need for it. (Item 51).

The second adversary proceeding relates to appellants' belief that Charles is hiding substantial assets in the name of his current wife and two dummy corporations. The Chapter 7 Trustee authorized appellants' pursuit of an adversary proceeding on his behalf to set aside allegedly fraudulent transfers and to seek turnover of this property to the bankruptcy estate. (Item 49).

Debtor filed an amended counterclaim in March of 1992, alleging, inter alia, that the 1972 Agreement and the 1972 Settlement should be invalidated and deemed unenforceable and that the counterclaim defendants should be liable in the amount of millions upon millions of dollars. In response, the Goya companies moved the bank-

[4] Item numbers refer to documents submitted as part of the record on appeal.

ruptcy court to abstain from deciding the counterclaim under 28 U.S.C. §§ 1334(c)(1) and (2) to allow the issue to be decided in New Jersey where it has been the subject of a long and protracted litigation. (Item 57).

On November 20, 1992, the bankruptcy court severed the first count of debtor's counterclaim, in which it is asserted that the 1974 Amendemnt to the 1972 Agreement is void and held that the issue was a "core" proceeding within bankruptcy court jurisdiction and thus refused to abstain from addressing it. The instant appeal was filed on November 25, 1992.

We find that the bankruptcy court abused its discretion and that its November 20, 1992 decision was clearly erroneous. We REVERSE the November 20, 1992 Opinion and Order of the Bankruptcy Court, and ORDER the bankruptcy court to abstain from resolving the state law issues presented in Debtor's Amended Counterclaim, including but not limited to debtor's challenge to the proofs of claim based on his allegation that the 1974 Amendment to the 1972 Settlement Agreement between the parties was invalid, and permit the issue to be resolved in the pending New Jersey Superior Court action.

We find that given our prior ruling lifting the stay, that the issue of the validity of the 1972 Agreement and the 1974 Amendment is a matter best left to the New Jersey courts that have already familiarized themselves with the facts and issues. We find that the New Jersey action represents a prior pending state court action that is the appropriate forum in which the state law issues raised in the Amended Counterclaim should be resolved.

I. Standard of Review

The standards of review that to decisions of the bankruptcy court are well-known. Under Fed. R. Bank. Bank. Proc. 8013, a bankruptcy court's factual findings are subject to reversal only if clearly erroneous, while legal conclusions are subject to *de novo* appeal. Findings of

facts are reviewed under the clearly erroneous standard. "Ultimate facts", or mixed questions of fact and law, are also tested in the First Circuit under the "clearly erroneous" standard. *U.S. v. Cochrane*, 896 F.2d 635, 639 (1st Cir.), cert. den. 496 U.S. 929 (1990).

II. Abstention

A. Mandatory Abstention

Under 28 U.S.C. § 1334(c)(2), there are six criteria for the exercise of mandatory discretion: (1) the motion to abstain is timely; (2) the proceeding is based on a state law cause of action; (3) the proceeding is related to a case under Title 11 but does not arise under Title 11; (4) the action could not have been commenced in federal court absent jurisdiction under 28 U.S.C. § 1334; (5) the state court action has commenced; and (6) the state court action can be timely adjudicated. *See In Re Nationwide Roofing and Sheet Metal, Inc.*, 130 B.R. 768, 778 (Bankr. S.D. Ohio 1991). We address this concerns seriatim.

No party contests the obvious fact that the first criterion is met. The second requirement is also satisfied, as the Amended Counterclaim is based on state law, i.e. the contract law of New Jersey. The third prerequisite is the crux upon which mandatory abstention swings, but in the final analysis it is present as well.

Indeed, this is the only relevant issue addressed by Appellee's briefs. Since Appellee has ignored every other contention and argument of Appellants, we deem them to be admitted. We would do so anyway, since we are firmly convinced of the accuracy of appellants' factual assertions and our reading of the law convinces us that they are in the right legally as well.

The validity of the 1974 Agreement is a contract law issue. It does not, under § 157(b)(2)(B), truly involve "matters concerning the administration of the estate"

of a debtor. It involves litigation to which the alleged debtor is a party. These kind of state law contract claims have been found not to fall within the categories of core proceedings. *In Re Castlerock Properties,* 781 F.2d 159, 161-62 (9th Cir. 1986). The Amended Counterlcaim involves an assertion not that the 1974 contract is somehow invalid under bankruptcy law, but that it is defective under contract principles.

"If an action would survive outside of bankruptcy, and in the absence of bankruptcy would have been initiated in a state or district court then it clearly involves a non-core matter." *In Re Mec Steel Bldgs., Inc.,* 136 B.R. 606, 609 (D.P.R. 1992) (citations omitted). "To merit classification as a core proceeding within the meaning of the statute, the nexus of the counterclaim itself 'must be a 'core' proceeding as that term is used in section 157 (b)(1); that is to say, it must arise under or arise in a case under Title 11." In other words, a debtor's counterclaim "does not become 'core' simply because it is technically or arguably within a given (b)(2) description." " *In Re Candalero Sand & Gravel, Inc.,* 66 B.R. 903, 907 (D.P.R. 1986) (citations omitted).

Charles claims that a claim filed against an estate is automatically "a core proceeding because it could arise only in the context of bankruptcy." (Appellee's Brief on Appeal, Docket Entry 8, at 25). This argument elevates form over substance. The mere fact that the Amended Counterclaim is raised in the form of a counterclaim against two parties that have filed contingent claims against the bankruptcy estate does not make it a core proceeding. This view would so enlarge bankruptcy jurisdiction as to convert every state action involving a bankruptcy debtor into a federal matter. *See Borintex Manufacturing v. Banco Gubernamental de Fomento,* 102 B.R. 8, 9 n.1 (D.P.R. 1989). Substance is more important than mere form. *Flores Rivera v. Telemundo Group,* 133 B.R. 674, 677 (D.P.R. 1991).

The contract validity question is not core to the bankruptcy proceeding. Even where the action "will drastically affect both the debtor-creditor relationship and the assets of the state" it cannot be deemed a core proceeding if it arises prior to the bankruptcy filing and involves a right independent of and antecedent to the bankruptcy filing. *In Re Candalero Sand & Gravel, Inc.*, 66 B.R. 903, 906 (D.P.R. 1986).

If Charles wants to challenge the contract he himself signed to settle protracted litigation over two decades ago, he should do so in the New Jersey forum where these issues are before the court. Additionally, as debtor himself recognizes, the state law rights that form the core of the counterclaim "could be enforced in a state court proceeding" and have absolutely no necessary connection to the bankruptcy court. (Docket Entry 8, 25-26). Abstention is thus the proper course. *See In Re Richmond Tank Car Co.*, 119 B.R. 124, 127 (S.D. Tex. 1989).

The final three requirements are obviously satisfied. The action could not have been commenced in federal court absent 28 U.S.C. § 1334. The New Jersey action has already commenced, and the case and the issue of the legal effects of the 1974 Amendment has been pending for some time, making this a proper case in which to abstain. *In Re Mec Steel Bldgs., Inc.*, 136 B.R. at 610. Finally, there is no reason not to believe that the state issue could not be timely adjudicated, as long as Charles slows down or ceases his attempts to protract it. Since we have already lifted the authomatic stay of the New Jersey action there is no reason for it not to go forward expeditiously. See *Acolyte Electric Corp. v. New York*, 69 B.R. 155, 180 (E.D.N.Y. 1986). If Charles had not sued for bankrutpcy in Puerto Rico, the New Jersey action might have concluded by now to resolve all remaining issues once Prudencio's domicile was decided to be New Jersey.

B. Discretionary Abstention.

We now turn to the question of discretionary abstention, and find that even were mandatory discretion not as clearly warranted as we find it is, that it was an abuse of the bankruptcy court's discretion not to abstain under the doctrine of discretionary abstention. "Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for state law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 1334(c)(1).

In *Flores Rivera,* many of the factors underlying the doctrine of discretionary abstention were enumerated. Among those were (1) the effect on the efficient administration of the estate, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulties or unsettled nature of the applicable law, (4) the present of a related proceeding in state court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the relatedness of the proceeding to the main bankruptcy case; (7) the substance, and not the form, of the alleged core proceeding; (8) the feasibility of severing state law issues from bankruptcy matters; (9) the burden on the docket of the bankruptcy court; (10) the likelihood that commencement of bankruptcy proceeding amounted to forum shopping; (11) the existence of a right to jury trial; and (12) the presence in the proceeding of nondebtor parties. *Flores Rivera,* 133 B.,R. at 677.

Under the above analysis we find that it was an abuse of discretion for the bankruptcy court to decline to abstain. This is a state law question, and abstention is warranted "on equitable grounds, and in the interest of justice and . . . respect for local law." *In re Interamericas Turnkey Development Co., Inc.,* 94 B.R. 9, 13 (D.P.R. 1988). While it is clear from our above discussion and from our previous decision that the factors warranting

discretionary abstention are met, we find several factors especially prominent.

One major factor counselling discretionary abstention is the principle of judicial economy. We found previously that in order to preserve the scarce resources of the judiciary duplicative proceedings should be avoided and that the New Jersey court to proceed to determine the issues relating to Charles' counterclaims in that action.

Especially important is the New Jersey court's familiarity with the entire history of this festering family fiasco.

> The New Jersey court examined the family's history from the date don Prudencio arrived in the United States to don Prudencio's death in 1976. In addition the New Jersey Court is fully acquainted with the whole situation. It spent [171] days in trial, with [32] witnesses and [600] exhibits marked into evidence. Finally, it seems to us incontrovertible that a State court has more expertise and is more familiar with its own probate and contract laws than a Federal bankruptcy court.

In Re Unanue-Casal, 159 B.R. at 98 (footnote omitted).

Another fundamental concern is the interrelatedness of the state law action with the bankruptcy action, or lack thereof. We again refer to our previous decision:

> We are persuaded by Appellants' argument that a resolution of the New Jersey proceedings would advance the settlement of the Bankruptcy case without interfering with it. If, for example, the decision came down in favor of the Debtor, he would then have available substantial funds with which to satisfy his creditors. If he were to lose in New Jersey then the Debtor would have a declaration against him under the 1974 Amendment for attorney's fees—no small sum—and a declaration that his inheritance claims were unconvincing. Both of these possible outcomes would promote the bankruptcy proceeding because

> they would determine if the Debtor would have additional funds or an additional debt. Neither of these proceedings would interfere with the estate because they are declaratory in nature and could not be acted upon without the proper proceedings in bankruptcy court.
>
> * * * *
>
> We are persuaded the Appellants have presented prima facie evidence that the resolution of this case in New Jersey would not interfere with the bankruptcy proceedings. On the other hand, the Debtor has failed to present any evidence to show that the administration of his estate would be affected.

In Re Unanue-Casal, 159 B.R. at 99.

We also find that it is extremely likely that the filing of the bankruptcy action amounted to forum shopping with the intent of avoiding the consequences of a New Jersey decision that Charles felt would be adverse to his interests.

> The Debtor, Charles Unanue, filed his petition for bankruptcy on August 29, 1990; about one week before the last trial day, scheduled for September 7, 1990, before Judge Kole. The Appellants claim that the Debtor, who was present in New Jersey during the trial until September 7, neither objected to the proceedings nor did he inform the Appellants of his Bankruptcy petition. These circumstances closely resemble those cases that found the Debtor had filed bankruptcy in bad faith to avoid the effect of an impending decision. The bankruptcy court, however, found that the Debtor's motions for removal from the New Jersey Superior court were merely his efforts to have his case heard in Puerto Rico.[5]

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[5] The Appellants informed the bankruptcy court in their brief of the Debtor's many attempts to remove the case to Puerto Rico. The Debtor tried to remove both to a district court in New Jersey and to this district court in Puerto Rico. He was sanctioned by both District Courts under F.R.C.P. 11, and a $16,011.15 sanction

> We can agree with the bankruptcy court that the Debtor was in a predicament, but we cannot agree it is the responsibility of the judicial system to accommodate him. Moreover, we cannot overlook the closeness to the end of trial in New Jersey that the debtor filed his bankruptcy petition; it has every appearance of being the sole result of the Debtor's or his attorney's perceptions that he was going to lose in New Jersey. We cannot turn our backs on this manipulation of the judicial system. There is also evidence that the Debtor's petition for bankruptcy is a sham, because he is not "financially distressed".

In Re Unanue-Casal, 159 B.R. at 101-02.

CONCLUSION

As a result of the analysis above, the court finds that the bankruptcy court's decision not to abstain was incorrect under either doctrine of abstention, mandatory or discretionary. Debtor's counterclaim should be remanded to the state court of New Jersey that has already begun to consider the facts relating to said counterclaim. Therefore, the bankruptcy court's decision not to abstain is hereby REVERSED. The stay is hereby lifted and the litigation pending in New Jersey will proceed. Judgment will be issued accordingly.

SO ORDERED.

San Juan, Puerto Rico, this 14th day of December, 1993.

/s/ Gilberto Gierbolini
GILBERTO GIERBOLINI
Chief
U.S. District Judge

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was assessed against him. (R. on Appeal Vol. I, Ex. 33A at 10, n.7) *See Unanue-Casal v. Unanue-Casal,* 898 F.2d 839 (1st Cir. 1990); *See also Unanue Casal v. Unanue Casal,* 132 F.R.D. 146 (D.C.N.J. 1989).

[Filed Dec. 15, 1993; Entered Dec. 16, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE: ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,

Debtor

Civil No. 92-2909(GG)

GOYA FOODS, INC.; GOYA DE PUERTO RICO, INC.; ZOLMAR REALTY CORP.; INTERAMERICAS ADVERTISING; ISLAND CAN CORPORATION; TRADEWINDS FOODS, INC.; INTER-AMERICAS ADVERTISING CORP.; CPR INTERNATIONAL, INC.; CPR INTERNATIONAL LIMITED; CONDIMENTOS DE PUERTO RICO, INC.; INDUSTRIAL ENTERPRISES, INC.; JOSEPH A. UNANUE; FRANK UNANUE,

Appellants

v.

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Debtor, and GERARDO QUIROS-LOPEZ,
Chapter 7 Trustee,

Respondents

JUDGMENT

In accord with our ORDER and OPINION of even date, the court finds that the bankruptcy court's decision not to abstain was incorrect under either doctrine of abstention, mandatory or discretionary. Debtor's counterclaim should be remanded to the state court of New Jersey

that has already begun to consider the facts relating to said counterclaim. Therefore, the bankruptcy court's decision not to abstain is hereby REVERSED. The stay is hereby lifted and the litigation pending in New Jersey will proceed. Judgment is to be entered accordingly.

SO ORDERED.

San Juan, Puerto Rico, this 14th day of December, 1993.

/s/ Gilberto Gierbolini
GILBERTO GIERBOLINI
Chief
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-1065

GOYA FOODS, INC., *et al.*,
Appellee,

v.

ULPIANO UNANUE-CASAL,
Appellant.

Before

Selya, *Circuit Judge,*
Coffin and Bownes, *Senior Circuit Judges*

ORDER OF COURT

Entered September 9, 1994

Appellant's petition for rehearing is *denied.*

By the Court:

/s/ Francis P. Scigliano
Clerk

[Filed & Entered Nov. 20, 1992]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,
Debtor

Case No. 90-04490(SEK)

CHAPTER 7

Consolidated Complaints
Under Adv. No. 91-0099

GERARDO A. QUIROS-LOPEZ, TRUSTEE
GOYA FOODS, INC. AND GOYA DE PUERTO RICO, INC.,
Plaintiffs

v.

ULPIANO UNANUE-CASAL,
Defendant

GOYA FOODS, INC. AND GOYA DE PUERTO RICO, INC. FOR
AND ON BEHALF OF GERARDO A.
QUIROS-LOPEZ, TRUSTEE,
Plaintiffs

v.

ULPIANO UNANUE-CASAL A/K/A CHARLES UNANUE,
LILIANE UNANUE, EMPEROR EQUITIES, INC.
AND KALIF TRADING, INC.,
Defendants

ULPIANO UNANUE-CASAL,
Debtor-Counterclaimant

v.

JOSEPH A. UNANUE and FRANK UNANUE, INDIVIDUALLY AND AS EXECUTORS OF THE WILLS OF PRUDENCIO AND CAROLINA UNANUE AND AS TRUSTEES OF THE INTER-VIVOS TRUST CREATED BY PRUDENCIO UNANUE; GOYA FOODS, INC., *et al.*,
Defendants Counterclaimees

OPINION AND ORDER

Should we sever Debtor's and the Trustee's objection to Goya Foods, Inc. and Goya de Puerto Rico, Inc.'s proof of claim and then grant these Corporations' requests for dismissal or abstention filed in this proceeding?

Background

Sometime in 1969 a dispute arose between Debtor, his father and brothers who were the sole shareholders of Goya Foods, Inc. and Goya de Puerto Rico, Inc. (the Goyas).[1] After extensive litigation, the dispute was settled. The terms of the settlement are contained in a Settlement Agreement dated June 9, 1972 for the Sale of Interest of Charles Unanue in Goya Foods, Inc. and Affiliated Companies. (the 1972 Settlement Agreement). This agreement was executed in Puerto Rico. Pursuant to its terms, Charles Unanue sold his voting shares in Goya Foods and his interest in the affiliated companies for $4.5 million.

In 1973 Debtor claimed the Buyers had breached the 1972 Settlement Agreement. Litigation commenced anew

[1] Refer to our Opinion and Order entered on May 15, 1992, (docket entry 252-A), for more details about this dispute.

only to be settled by an amendment to the 1972 agreement executed on July 31, 1974. In the 1974 Amendment, Debtor waived his right to inherit from his father. The 1974 Amendment also specified liquidated damages by way of double costs and attorneys' fees to be assessed against any signatory who once again institutes and looses any suit, action or proceeding contesting the settled matters.

It is this last clause, the penal clause of the 1974 Amendment, which is the backbone for the Goyas' proofs of claims filed in this bankruptcy case. These companies each claim they should be paid $15,000,000.00 and $5,000,000.00 respectively, as general unsecured creditors, because Debtor is currently contesting the validity of the 1972 Settlement Agreement as amended in 1974, his father's will and claiming a share in his mother's and aunt's estates before the state courts of New Jersey, Puerto Rico and now in this bankruptcy court. This new wave of litigation, according to the Goyas, is a violation of the covenant calling into play the penal clause of the 1974 Amendment.

Debtor objects to these claims because:

1. the 1974 Amendment is invalid or void, because under the laws of Puerto Rico Debtor could not have waived his future right to inherit from his father;

2. the claims lack evidence to substantiate the respective amounts to be paid; and,

3. the claims are contingent and "unmature and should be liquidated by the bankruptcy court in order to afford the Debtor complete relief."

The Trustee joined Debtor's objection to the Goyas' claims.

At that point in time all parties were engaged in a flurry of filings; contested matter to request the lift of stay, two adversary proceedings, the objection to proofs

of claims, plus a plethora of discovery motions all of which confirm the continued discord. In sum, we were faced with an imbroglio. We tried to manage this litigation by consolidating the adversary proceedings and ordering Debtor to file the objection to the Goyas' claims as a counterclaim in the consolidated proceeding. Subsequently, Debtor amended the counterclaim. The prayer for the first claim for relief in this amended counterclaim asks this Court to declare "null and void and meritless on its face *all* of the proofs of claims filed by the Goya[s]."

SEVERANCE

The first claim for relief explains why Debtor wants us to deny the Goyas' proofs of claims filed in this case. Since the consolidation, the parties have filed the several preliminary motions which are pending.

We have reviewed all of these motions. Pursuant to this review we hereby sever the amended counterclaim's "First Claim for Relief", and within that First Claim for Relief, we sever the issue of whether the Goyas' proofs of claims filed in this case should be denied together with those portions of the preliminary motions addressing the Bankruptcy Court's lack of jurisdiction and need to abstain in this proceeding.[2]

We order the severance because:

1. We may avoid resolving intricate issues of jurisdiction and determinations of whether all causes of actions raised in the complaint and amended counterclaim are core or "non-core".[3]

2. Whether we rule in favor or against the objections, the ruling would afford both the bankruptcy court and

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[2] *In Re Manufacturers Acceptance Corp.*, 82 B.R. 155 (Bkrtcy. S.D. Fla. 1988).

[3] The consolidated adversary complaints filed in this case seek not only to avoid alleged fraudulent transfers, but also seek a denial of discharge.

the Trustee a swift and economical way of liquidating this Chapter 7 case. Hence, judicial resources are conserved by this severance in suits which thus far have engendered litigation on constitutional questions posed by *Connecticut v. Doehr,* and a myriad of preliminary requests including such arcane matters as issuance of letters of rogatory to allow attachments, etc., of assets purportedly located in Great Britain and Switzerland.[4] These are but a presage of what is to come.

In sum, irrespective of the outcome, resolving the objection to the Goyas' claims ahead of other issues raised in the consolidated amended adversary complaints and the amended counterclaim, provides the best solution to this bankruptcy case.

Jurisdiction

Having severed the issue of Debtor's and the Trustee's objections to Goyas' proofs of claims, it behooves us to decide whether we have jurisdiction to adjudicate the objection.

Goyas urge us to abstain from adjudicating the objection to Goyas' claims in favor of allowing them to be "asserted and resolved" in pending state court litigation, particularly since we lack *jurisdiction* to enter a final and binding decision in this "non core" proceeding.

Does the jurisdiction in bankruptcy extend to adjudicating objections to claims whose ultimate resolution depends upon applicable state law? Of all the opinions we have read on the subject of federal courts jurisdiction in bankruptcy and the distinction between core and "non-core" matters, we find Judge Wisdom's opinion *In the Matter of Wood,* a superb explanation of these sometimes confused concepts.[5] We can not improve on what Judge

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[4] 111 S. Ct. 2105 (1991).

[5] 825 F.2d 90 (5th Cir. 1987).

Wisdom has stated. We therefore, respectfully adopt his position as our own when he states.

> "Years of effort to reform the bankruptcy laws culminated with the enactment of the Bankruptcy Reform Act of 1978. [cit omitted] As part of its overall goal to create a more efficient procedure for administering bankruptcies, the 1978 Act vested broad powers in the bankruptcy courts. This reform was shortlived. In 1982 the Supreme Court decided *Marathon v. Northern Pipelines.* [cit. omitted] The Court declared the jurisdictional provision of the 1978 Act unconstitutional because, in short, it vested Article III judicial power in Article I judges. Courts were left to their own devices while Congress deliberated a response to *Marathon. With prompting from bench, bar, and law professors with expertise in bankruptcy, Congress responded with the Bankruptcy Amendments and Federal Judgeship Act of 1984. Essentially, Congress reenacted the 1978 Act, but divided its jurisdictional grant into "core" proceedings, over which the bankruptcy courts exercise full judicial power—and "otherwise related" or "non-core" proceedings—over which the bankruptcy courts exercise only limited power. . . ."* [6]

Judge Wisdom then examines whether the Bankruptcy Amendments and Federal Judgeship Act of 1984 in fact limited the jurisdiction of the federal courts to adjudicate matters in a bankruptcy case. He concludes these Amendments placed no such limit on the federal courts when handling a bankruptcy case. Rather these Amendments reallocated the grant of the all encompassing jurisdiction between the Article III district court judges and the Article I bankruptcy court judges, through the distinction between the core and "non-core" matters. Thus, Judge Wilson states:

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[6] *Id.* at 91.

"Congress was concerned with the inefficiencies of piecemeal adjudication of matters affecting the administration of bankruptcies and intended to give federal courts the power to adjudicate all matters having an effect on the bankruptcy. [*cit. omitted*] *Courts have recognized that the grant of jurisdiction under the 1978 Act was broad.* [*cit. omitted*]

. . . Nothing in Marathon suggests that we should read the corresponding provisions of the 1984 Act differently.

For the purpose of determining whether a particular matter falls within bankruptcy jurisdiction, it is not necessary to distinguish between proceedings "arising under", "arising in a case under", or "related to a case under", title 11. These references operate conjunctively to define the scope of jurisdiction. Therefore, it is necessary only to determine whether a matter is at least "related to" the bankruptcy." The Act does not define "related" matters.

Courts have articulated various definitions of "related", but the definition of the Court of Appeals for the Third Circuit appears to have the most support: "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. [*cit. omitted*] *This definition comports with the legislative history of the statutory predecessor to section 1334. Neither Marathon nor general concerns of comity counsel against its use. We adopt it as our own."* [7]

Can anyone seriously question whether the outcome of Debtor's and the Trustee's objection to the Goyas' claims has an effect on the estate being administered in this bankruptcy case?

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[7] **Wood, at 92-93.**

We therefore hold jurisdiction to adjudicate the objections to the Goyas' claims lies in the federal court in this bankruptcy case.

Placement of Jurisdiction

Judge Wisdom examines the placement of bankruptcy jurisdiction under 1978 Act which is commonly referred to as Bankruptcy Code, by stating:

> *"The jurisdictional provision of the 1978 Act, section 1471, accomplished two things. First, subsection (b) vested an expansive bankruptcy jurisdiction in the district courts.* [*cit. omitted*] *Second, subsection (c) conferred the power to exercise that jurisdictional grant in the bankruptcy courts.* [*cit. omitted*] *The issue in Marathon was not the constitutionality of subsection (b), but the constitutionality of subsection (c). Marathon held that Congress could not vest the whole of bankruptcy jurisdiction in bankruptcy courts because the jurisdictional grant encompassed proceedings too far removed from the "core" of traditional bankruptcy powers to allow them to be adjudicated by non-Article III judges.* [*cit. omitted*] *The holding in Marathon suggests no concern over the constitutionality of the scope of bankruptcy jurisdiction defined by Congress; its concern is with the* placement *of that jurisdiction in non-Article III courts. In response to Marathon, Congress altered the placement of bankruptcy jurisdiction by creating a statutory distinction between core and non-core proceedings and restricting the power of bankruptcy courts to adjudicate the latter." (our emphasis)*[8]

To determine whether we may enter a final opinion or a proposed one subject to de novo review by the U.S. District Court on the Trustee's objection to the Goyas' claims, we must determine whether an objection to a

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[8] *Wood*, at 92-93.

proof of claim is a core bankruptcy proceeding traditionally within the powers of adjudication granted to the non-Article III bankruptcy judge.[9] *In short, is the objection raised herein a core or "non-core" matter?*

Although the statute does not define "core", it does provide a non exclusive list of examples of core proceedings.[10] *These examples include:*

> *"(A) matters concerning the administration of the estate;*
>
> *(B) allowance or disallowance of claims against the estate."*

Judge Wisdom again provides further guidance by stating:

> *"In determining the nature of the proceeding for the purposes of determining core status, the court must look both at the form and substance of the proceeding."* [11]

We already know proceeding at hand concerns both of the cited examples which Congress proffered as core proceedings.

The form of the present action is peculiar to bankruptcy proceedings and is provided for in Rule 3007 of the Federal Rules of Bankruptcy Procedure, and Section 502(c) of the Code.[12] *In this sense an objection to a proof of*

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[9] 28 U.S.C. Subsection 157(b)(1) gives the federal bankruptcy courts the power to adjudicate "all core proceedings under title 11, or arising in a case under title 11" and to enter appropriate orders and judgments. Subsection 157(c)(2) grants these courts the limited power to hear "a proceeding that is not a core proceeding but otherwise related to the case under title 11" and submit proposed findings of fact and conclusions of law to the federal district court for their de novo review. *Wood*, at 95.

[10] See *28 U.S.C. Section 157(b)(2)*.

[11] *Wood*, at 97.

[12] Rule 3007 provides: "An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice

claim could only arise within the context of a bankruptcy case and is one of the matters traditionally adjudicated by bankruptcy referees, now judges.

We are aware that the state law component underlying the Goyas' claims [the penalty clause] could be enforced in a state court proceeding absent bankruptcy, but the nature of the state proceeding would be different from the proceeding followed in the objection to the Goyas' claims.[13]

Wherefore, both the form and substance of this proceeding is a core matter because the objection to the Goyas' claims does raise as a primary issue the allowance or disallowance of their proofs of claims and their federally created right to receive estate funds upon distribution of the estate's assets.

Abstention

Like Judge Wisdom, we do not believe the unaltered broad grant of jurisdiction to the federal courts to be exercised in a bankruptcy case will cause the federal courts to constantly decide matters best left to the state courts.[14] *The doctrine of abstention built into 28 Section 1334 is the key which preserves this balance.*

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of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding."

Section 502 (c) states:

"There shall be estimated for purposes of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance."

[13] *Wood*, at 97.

[14] Frankly, most bankruptcy courts are too busy to even want to take on another court's case load.

> *"The district court expressed its concern that an overbroad interpretation of section 1334 would bring into federal court matters that should be left to state courts to decide. We have also expressed the same concern.* [*cit. omitted*] *There is no restrictive interpretations of the statutory grant of jurisdiction under section 1334. The Act grants the district court broad power to abstain whenever appropriate "in the interest of justice, or in the interest of comity with State courts or respect for State law".* [*cit. omitted*] *The abstention provisions of the Act demonstrate the intent of Congress that concerns of comity and judicial convenience should be met, not by rigid limitations on the jurisdiciton of federal courts, but by the discretionary exercise of abstention when appropriate in a particular case. . . ."* [15]

Under 28 U.S.C. 1334(c)(1), we may voluntarily abstain from adjudicating any matter, even if it meets the definition of a "core" proceeding, if principles of fairness or comity justify deference to state courts.[16]

Goyas' aver we should abstain because:

(1) the suits filed before the Probate State Court of New Jersey were pending when this petition was filed;

(2) these suits were in fact more advanced than the one at hand;

(3) the issues raised herein could be more expeditiously and economically adjudicated in the New Jersey action;

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[15] *Id.* at 91.

[16] *Matter of Candelero Sand & Gravel, Inc.*, 66 B.R. 903, 907 (D.C. P.R. 1986); *Borintex Mfg. Corp. v. Bco. Gubernamental de Fomento Para P.R.*, 102 B.R. 8-9 .C. P.R. 1989); 1 *Collier on Bankruptcy*, Section 3.01 (15th ed.). *Cf. In Re Corporacion de Servicios Medicos Hospitalarios*, 60 B.R. 920, 927-930.1 *Collier on Bankruptcy*, 3.01[b] (15th ed.).

(4) Debtor lacks standing to object to the Goyas' claims.[17]

We concede the suits before the state courts of New Jersey and Puerto Rico were filed before this petition in bankruptcy. We also know these suits involve the same family feud, revolve around the same core of facts, but request different remedies.

We do not agree that these suits are more advanced than the one at hand nor that the severed issue could be more rapidly and economically adjudicated by the Probate New Jersey Court. The case was filed before the Probate Court of New Jersey in 1987. That Court stayed all causes of action except the issue of Don Prudencio's domicile on the date he died. Litigation of that one issue went on in the Probate Court of New Jersey for about two years; a retired judge had to be activated to adjudicate the issue; and the trial lasted some one hundred and seventy two trial days.

The suits filed in Puerto Rico were consolidate and assigned to Judge Alicea of the P.R. Superior Court. He entered a stay and decided to abstain for reasons of comity, from determining Don Prudencio's domicile at death. He has not stated whether he will give full faith and credit to the Probate Court's adjudication of that issue.

We in turn also decided to stay our proceedings until the Probate Court decided the issue of domicile in the hopes it might have rendered this bankruptcy moot.

When the Probate Court decided Don Prudencio's domicile was New Jersey on the date he died, bankruptcy

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[17] Goyas are perhaps purposefully vague in stating whether their request for our abstention is premised on the mandatory or discretionary abstention provisions of the law. We believe the discretionary provision for abstention is the one invoked herein, as mandatory abstention is precluded by our rulings favor of subject matter jurisdiction and determining the objection to claims is a core matter.

proceedings were renewed. The same activity did not occur in the other courts because of the automatic stay. Hence, this Court is at a more advanced stage than any other one, especially when the pretrial is already scheduled for December 1, 1992.

Furthermore, if necessary, Code Section 502(c) allows this Court to estimate the proofs of claims which unduly delay the administration of a bankruptcy case, when these claims are contingent or unliquidated. We know of no parallel state court procedure. This procedure peculiar to bankruptcy is designed to provide a just and rapid solution to proceedings in a bankruptcy case.

Our review of documents filed shows the Trustee at an early date adopted Debtor's objection and joined Debtor in urging us to adjudicate the objection before considering other pending matters. We, therefore, hold the objection to Goyas' claims has been raised by the real party in interest with standing so to do.

To summarize:

1. We sever the amended counterclaim's "First Claim for Relief", and within that First Claim for Relief, we sever the issue of whether the Goyas' proofs of claims filed in this case should be denied together with those portions of the preliminary motions addressing the Bankruptcy Court's lack of jurisdiction and need to abstain in this proceeding.

2. We stay all other causes of actions together pending discovery in the captioned adversary proceeding.

3. The Goyas' Motion to Dismiss the severed issue for lack of subject matter jurisdiction is denied, as well as their request calling on us to exercise discretionary abstention to allow the New Jersey Court to decide the severed issue.

4. The pretrial hearing scheduled for December 1, 1992 before the undersigned remains in full force and effect *with respect to the severed issue only*.

The Clerk will notify this Opinion and Order immediately to all parties by the fastest means available to her.

GIVEN in San Juan, Puerto Rico, this 20th day of November 1992.

/s/ Sara de Jesus
SARA DE JESUS
U.S. Bankruptcy Judge

No. 94-1025

SUPREME COURT, U.S.
FILED
JAN 9 1995
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,

Petitioner,

v.

GOYA FOODS, INC., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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January 9, 1995

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Should certiorari be granted to review a decision made under the bankruptcy abstention statute, 28 U.S.C. § 1334(c), although the statute provides that a decision thereunder "is not reviewable . . . by the Supreme Court of the United States", and this provision was recently amended to eliminate any ambiguity that might formerly have existed as to its scope?

2. Should certiorari be granted to review a judgment directing a bankruptcy court to abstain from resolving a dispute and allow a state court to do so, when the dispute has now been substantially decided by the state court, so that review of the abstention decision would have little or no practical effect?

3. Should certiorari be granted at the request of a Petitioner who presented none of the contentions upon which he seeks review to any of the courts below?

4. Should certiorari be granted to review a decision that a bankruptcy court should abstain in favor of a state court, where the Petitioner's arguments that the bankruptcy court lacked power to abstain are unsupported by any relevant authority, there is no conflict of decisions, and the courts below applied well-settled standards in allowing state-law issues to be determined in the seven-year-old state-court action that had repeatedly been disrupted by Petitioner's improper forum-shopping tactics?

PARTIES TO THE PROCEEDING

The parties are identified in the petition for writ of certiorari. (Pet. ii).*

RULE 29.1 LISTING

Pursuant to Rule 29.1 of the Rules of this Court, Respondents state that none of the corporate Respondents has any parent corporations or subsidiaries (other than wholly owned subsidiaries), except as follows:

Respondent Goya Foods, Inc. is the corporate parent of Respondent Zolmar Realty Corp. In addition, Bison Canning Co., Inc., Cardet Wholesale Foods, Inc., and Cuban Portorrican American Products, Inc. are subsidiaries of Goya Foods, Inc.

Respondent Goya de Puerto Rico, Inc. is the corporate parent of Respondent Tradewind Foods, Inc.

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* Petitioner's enumeration of the parties includes Gerardo A. Quiros-Lopez, Esq., the trustee of Petitioner's estate in bankruptcy, as a party, but does not designate Mr. Quiros-Lopez as either a petitioner or a respondent in this Court. Under this Court's Rule 12.4, Mr. Quiros-Lopez is a respondent to the petition. However, as used in this Brief in Opposition, the term "Respondents" does not include Mr. Quiros-Lopez.

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Unanue-Casal v. Unanue-Casal (*In re* Unanue-Casal), 159 B.R. 90 (D.P.R. 1993), *aff'd*, 23 F.3d 395 (1st Cir. 1994)..... 8, 9, 11, 26

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L. Filson, *The Legislative Drafter's Desk Reference* (1992) 14-15

D. Hirsch, *Drafting Federal Law* (2d ed. 1989) 15

R. Stern, E. Gressman *et al.*, *Supreme Court Practice* (7th ed. 1993) 16, 19

No. 94-1025

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW AND JURISDICTION

The opinions below are set forth in the Appendix to the Petition. (Pet. 1a-33a). While Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1), Respondents dispute this Court's jurisdiction on the grounds set forth under the Reasons for Denying the Writ.

STATUTES INVOLVED

28 U.S.C. § 1334. Bankruptcy cases and proceedings.[1]

> (a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.

[1] 28 U.S.C. § 1334 is set forth here in its form applicable to this case. The statute has since been amended by section 104(b) of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, 4109, effective in all bankruptcy cases filed after October 22, 1994. The significance of this amendment is discussed *infra* under Point I of the Reasons for Denying the Writ.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) (1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain or not to abstain made under this subsection is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive

jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

COUNTERSTATEMENT OF THE CASE

This petition continues several years of bitter litigation fomented by Petitioner, Charles Unanue, against various members of his family and family-owned companies. Petitioner has sought (1) an inheritance from his late father, who died in 1976 without leaving him any assets; and (2) the nullification of two settlement contracts that he executed in 1972 (the "1972 Agreement") and 1974 (the "1974 Amendment"), in which prior family litigation was resolved through Respondents' purchase of Petitioner's interests in the various companies for millions of dollars in cash.[2]

After years of litigation, the New Jersey Superior Court rejected Petitioner's inheritance and contract claims, on their merits, in November 1993. (*See infra*, pp. A-9-A-22).[3] Petitioner

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[2] Petitioner's Statement of the Case (Pet. 3-11) contains scurrilous allegations of wrongdoing, by Respondents and others, extending as far back as 1969. These allegations have little relevance to the parties' substantive inheritance and contract disputes, and none at all to the abstention issue on which Petitioner seeks certiorari. That being the case, Respondents will confine their Counterstatement to the *relevant* facts, including those bearing upon the issues that would be before this Court if certiorari were granted. (*See* Sup. Ct. R. 15.1.) Respondents' failure to respond to Petitioner's other allegations should not be deemed an admission of their correctness. In particular and without limitation, Respondents expressly deny Petitioner's allegations concerning "a massive tax fraud scheme," his description of the contents of the 1972 Agreement and 1974 Amendment, and his "estimates" of the value of his parents' estates.

[3] Since the contract issues as well as the inheritance issues have been heard and resolved in the New Jersey Action, Petitioner's representation that the parties' litigation since 1987 "has focused exclusively on Petitioner's claim to inherit his share of his parents' estates" (Pet. 3) is clearly inaccurate.

now asks this Court to hold that a federal bankruptcy court should have decided these issues, while entirely disregarding the fact that the state court has already decided them.

The New Jersey Action

Petitioner began this round of family litigation by asserting his inheritance claim in 1987. Upon receiving Petitioner's demand, his father's executors and trustees commenced a declaratory judgment action against Petitioner (the "New Jersey Action") in the Probate Part of the Superior Court of Bergen County, New Jersey, where the father's will had been probated 11 years before and a trust created by the father had long been administered. In addition to Petitioner's inheritance claim, the issues in the New Jersey Action included the validity of the 1972 Agreement and 1974 Amendment, under which Petitioner received more than $4 million in cash in return for surrendering his interests in the companies and agreeing, *inter alia*, never to contest his father's estate plan or to seek an inheritance from his father's estate or trust.

Since the inception of the New Jersey Action, Petitioner has engaged in a persistent and extraordinary series of obstructive tactics designed to thwart or delay its resolution. *See*, *e.g.*, *Unanue-Casal v. Unanue-Casal*, 132 F.R.D. 146, 148-49 (D.N.J. 1989) (describing some of Petitioner's abusive conduct), *aff'd without opn.*, 914 F.2d 244 (3d Cir. 1990). His avowed purpose has been to secure what he perceives to be a more favorable forum -- a court located in Puerto Rico, rather than the New Jersey state court -- to hear his inheritance and contract claims. Among other things, in 1987 and 1988, Petitioner filed two unnecessary, duplicative actions against Respondents in the Superior Court of Puerto Rico. The Puerto Rico courts have stayed these actions pending resolution of the New Jersey Action, while harshly criticizing Petitioner's improper claim-splitting and efforts to manipulate the judicial system.

Despite Petitioner's unremitting obstructionism, pretrial proceedings in the New Jersey Action were completed in the

spring of 1989, and trial on the domicile of Petitioner's father, an important issue in that action, was set to begin in July. Petitioner did not allow the trial to begin without a final burst of efforts to thwart it. Late in the afternoon of the business day before trial was to commence, Petitioner filed a manifestly frivolous petition to remove the two-year-old New Jersey Action from the New Jersey Superior Court to the United States District Court for the District of Puerto Rico, 1500 miles away. On the morning of trial, Petitioner again sought removal, this time in the District of New Jersey. These removal attempts -- jurisdictionally baseless, untimely, and improvident on their face -- were rejected by federal judges in both New Jersey and Puerto Rico, and Petitioner was sanctioned by both courts pursuant to Rule 11 of the Federal Rules of Civil Procedure, in orders affirmed by the First and Third Circuit Courts of Appeals, both because the removal petitions were objectively baseless and because

> [T]here [was] good reason to believe that [Petitioner] filed the removal petitions for "an improper purpose," namely, to harass, or to delay the start of the New Jersey trial. . . . [T]he filing of the removal petition, at the eve of trial, many months after the state court suit began, in a clearly improper forum, tended to undermine the goals that Rule 11 seeks to advance.

Unanue-Casal v. Unanue-Casal, 898 F.2d 839, 842 (1st Cir. 1990) (Breyer, C.J.); *see also Unanue-Casal v. Unanue-Casal*, 132 F.R.D. at 150-51.

Petitioner's Bankruptcy

With the removal attempts rejected, and Petitioner's other last-ditch efforts to enjoin the proceedings also turned away, the lengthy New Jersey trial began on July 10, 1989. The trial had substantially concluded, and the parties were preparing their post-trial memoranda, when Petitioner filed a voluntary

Chapter 7 bankruptcy petition in the District of Puerto Rico on August 29, 1990.[4]

Petitioner promptly sought to transform his Puerto Rico bankruptcy case into "the central arena for the continued struggle among the Unanue brothers." (Pet. 6). He pursued this goal in two ways. First, after the bankruptcy filing automatically stayed the New Jersey Action under 11 U.S.C. § 362(a), Petitioner vigorously opposed his adversaries' attempts to obtain relief from that stay to permit the action to resume and be concluded. In February 1991, over Petitioner's objection, the bankruptcy court granted limited relief from the stay to permit the New Jersey court to resolve the domicile issue. In December 1991, the New Jersey court handed down a lengthy opinion squarely rejecting Petitioner's position on that issue and finding that Petitioner's father had been domiciled in New Jersey, as Respondents had contended, at all relevant times. *See Matter of Unanue*, 255 N.J. Super. 362, 605 A.2d 279 (Law Div. 1991) (opinion abridged for publication).

As another means to bring the litigation to the bankruptcy court, and thereby oust the jurisdiction of the New Jersey court, Petitioner insisted that his creditors file formal proofs of claim in the bankruptcy case before he would proceed with a court-ordered examination of his financial condition.

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[4] Petitioner's bankruptcy schedules recited that he owned negligible tangible assets, while he had liabilities of more than $1 million. This claim was, and remains, difficult to accept given Petitioner's receipt of more than $4.3 million in cash between 1972 and 1975 pursuant to the 1972 Agreement and 1974 Amendment, as well as several series of highly suspicious financial transactions to which Petitioner was a party, and the invocation by Petitioner and his wife of the Fifth Amendment privilege against self-incrimination when questioned concerning these transactions. *See Quiros-Lopez v. Unanue-Casal* (*In re* Unanue-Casal), 998 F.2d 28, 34 (1st Cir. 1993) (reviewing financial history of Petitioner and finding "reasonable 'likelihood of recovery' " on bankruptcy trustee's causes of action for Petitioner's allegedly fraudulent transfers of property), *aff'g* 144 B.R. 604 (D.P.R. 1992).

Because the 1974 Amendment had a prevailing-party attorneys'-fee clause, those Respondents who had borne the heavy legal bills created by Petitioner's baseless inheritance and contract claims would be entitled to recover their reasonable legal expenses from Petitioner *if* they ultimately prevailed in the pending actions, including the New Jersey Action. Accordingly, two of the Respondents filed contingent claims for estimated amounts of these expenses.[5] Thereupon, Petitioner filed objections to these attorneys'-fee claims, based principally on his contention that the claims must be invalid because the 1974 Amendment on which they were based was null and void in its entirety, and he demanded that the bankruptcy court rule on this state-law issue, although the identical issue had by then already been pending in the New Jersey Action for more than three years.

While Petitioner was misusing his bankruptcy filing to stall the New Jersey Action and provide him with a new Puerto Rico forum to adjudicate his contract invalidity argument, a series of highly unusual events was taking place within the bankruptcy case itself. In the summer of 1991, Petitioner caused his wife to purchase the claims of all the scheduled creditors who held liquidated, dischargeable debts, and to file an instrument waiving her entitlement to pursue any claim against the estate. Petitioner thus eliminated any colorable purpose that his bankruptcy case might have had, even as considered from the "debtor's" own point of view, except as a forum-shopping mechanism for him to use in the ongoing family litigation between himself and Respondents.

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[5] The Respondents who filed contingent proofs of claim for their estimated attorneys' fees and litigation expenses were Goya Foods, Inc. and Goya de Puerto Rico, Inc. None of the dozen other Respondents ever filed a proof of claim in Petitioner's bankruptcy case, nor did any of the other parties to the New Jersey Action do so.

The Relief-From-Stay Decisions

Soon after the New Jersey court held that Petitioner's father had been domiciled in that state, the plaintiffs in the New Jersey Action asked the bankruptcy court to grant further relief from the automatic stay to permit that action to be concluded. In an Opinion and Order dated May 15, 1992, the bankruptcy court denied this application. The plaintiffs appealed this ruling to the United States District Court for the District of Puerto Rico.

On August 3, 1993, the district court reversed the bankruptcy court's denial of relief from the stay, holding in a comprehensive opinion that the New Jersey state court was the proper forum for the parties' substantive disputes. *Unanue-Casal v. Unanue-Casal* (*In re* Unanue-Casal), 159 B.R. 90 (D.P.R. 1993). Petitioner's motion for an emergency stay was denied by the First Circuit Court of Appeals (Breyer, Selya and Cyr, JJ.) on November 16, 1993. (*Infra*, pp. A-1-A-3).

Demonstrating the appropriateness of vacating the stay, the New Jersey court was able to decide the merits of the parties' disputes within a few months after the stay was lifted. The court upheld Respondents' positions and rejected those of Petitioner, finding that both the 1972 Agreement and the 1974 Amendment were valid in their entirety, and that Petitioner had no inheritance rights to any of the assets he was seeking. (*See infra*, pp. A-9-A-22). Subsequently, the New Jersey court also held that under the 1974 Amendment, Petitioner is required to pay his adversaries' reasonable expenses and attorneys' fees incurred in the New Jersey Action.[6]

On May 12, 1994, the First Circuit (Selya, Coffin and Bownes, JJ.) issued a brief, unpublished *per curiam* opinion

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[6] Determination of the exact amount of the costs and attorneys' fees to be paid by Petitioner -- the last remaining issue in the New Jersey Action -- was referred to a special master for consideration. The master held an evidentiary hearing on this issue in August 1994, and his report is expected shortly.

pursuant to its Local Rule 27.1,[7] affirming the district court's decision to lift the stay. After describing Petitioner's "fierce tenacity" in the litigation as "misplaced," the First Circuit relied on "the district court's well-conceived opinion" in summarily affirming. *Unanue-Casal v. Unanue-Casal*, 23 F.3d 395 (1st Cir. 1994) (table) (*infra*, pp. A-4-A-7). On June 3, 1994, the First Circuit denied Petitioner's motion for rehearing, without opinion. (*Infra*, p. A-8). Petitioner did not seek review of the First Circuit's decision in this Court; his time to do so expired on September 1, 1994. *See* 28 U.S.C. § 2101(c); Sup. Ct. R. 13.1.

The Abstention Decisions

Meanwhile, in March 1992, Petitioner filed a new "Amended Counterclaim" against Respondents in his bankruptcy case. This pleading renewed Petitioner's contentions that the 1972 Agreement and 1974 Amendment should be invalidated in their entirety, so that Petitioner should receive millions of dollars in damages as well as stock interests in all the family-owned companies, and also reasserted Petitioner's inheritance claims. Respondents asked the bankruptcy court to abstain from deciding the state-law issues presented by the Amended Counterclaim, and instead to allow them to be resolved in the New Jersey Action where they had already been pending for five years. *See* 28 U.S.C. § 1334(c)(1), (2).

By Opinion and Order dated November 20, 1992, the bankruptcy court refused to abstain from resolving the Amended Counterclaim, under either the "mandatory abstention" statute, 28 U.S.C. § 1334(c)(2), or the "discretionary abstention" statute, 28 U.S.C. § 1334(c)(1). (Pet.

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[7] Local Rule 27.1 of the Rules of the United States Court of Appeals for the First Circuit, entitled "Summary Disposition," provides that "[a]t any time, ...the court may...affirm and enforce the judgment or order below...if it shall clearly appear that no substantial question is presented."

20a-33a).[8] The grounds for the bankruptcy court's ruling were closely related to those that had grounded its denial of relief from the automatic stay six months earlier.

Respondents appealed to the district court, which again reversed.[9] *Goya Foods, Inc. v. Unanue-Casal* (*In re* Unanue-Casal), 164 B.R. 216 (D.P.R. 1993) (Pet. 3a-16a). The district court first held that the Amended Counterclaim was subject to mandatory abstention, finding that all the statutory prerequisites under § 1334(c)(2) were met. (164 B.R. at 221-22; Pet. 10a-12a). The court then continued: "We now turn to the question of discretionary abstention, and find that even were mandatory [abstention] not as clearly warranted as we find it is, that it was an abuse of the bankruptcy court's discretion not to abstain under the doctrine of discretionary abstention." (164 B.R. at 222; Pet. 13a). In reaching this conclusion, the district court relied upon a well-recognized list of factors relevant to discretionary abstention decisions,

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[8] More specifically, the bankruptcy court attempted to "sever" Petitioner's objection to the two proofs of claim from the other issues raised in the Amended Counterclaim. However, Petitioner's objection to claims was principally based on his assertion that the entire 1974 Amendment upon which the claims were based, as well as the antecedent 1972 Agreement, were null and void in their entirety -- a contention that, if accepted by the bankruptcy court, would have had consequences far more wide-ranging than disallowance of the claims. Moreover, since the claims represented attorneys' fees and legal expenses that would be owed by Petitioner only if Respondents won the New Jersey Action and other litigation, liquidating or estimating the claims could have required the bankruptcy court to examine the merits of all the substantive contract and inheritance issues involved in that litigation. Thus, despite Petitioner's emphasis on the supposedly limited issue the bankruptcy court had "severed" for consideration (*see* Pet. 8-9), in truth there would have been little, if any, practical difference between the bankruptcy court's resolving the "severed issue" it had identified and its resolving the entire series of contract issues raised by the Amended Counterclaim.

[9] Although the abstention appeal was ultimately assigned to the same district judge before whom the relief-from-stay appeal was pending (Chief Judge Gilberto Gierbolini of the District of Puerto Rico), the two appeals were docketed, briefed, and decided separately.

which the bankruptcy court had not analyzed. (164 B.R. at 221; Pet. 13a). The court also quoted from its earlier relief-from-stay decision with regard to (1) the interests of judicial economy that would be served by allowing the New Jersey Action to proceed; (2) "the New Jersey court's familiarity with the entire history of this festering family fiasco"; (3) the lack of interference that would be caused to the bankruptcy case by abstention; and (4) Petitioner's evident misuse of the bankruptcy process as a means of forum-shopping. (164 B.R. at 222-23; Pet. 14a-16a, citing 159 B.R. at 98-102).

Petitioner, in turn, again appealed to the First Circuit. On August 5, 1994, that court (Selya, Coffin and Bownes, JJ.) issued an unpublished, one-paragraph *per curiam* opinion, again pursuant to its Local Rule 27.1, holding that "[e]ssentially for the reasons stated by the district court in its opinion, we find that the bankruptcy court abused its discretion in declining to abstain pursuant to 28 U.S.C. § 1334(c)(1)." *Goya Foods, Inc. v. Unanue-Casal*, 32 F.3d 561 (1st Cir. 1994) (table) (Pet. 1a).[10] On September 9, 1994, the court of appeals denied Petitioner's motion for rehearing, without opinion. (Pet. 19a). Petitioner filed this petition for certiorari on December 8, 1994.

REASONS FOR DENYING THE WRIT

For several reasons -- all ignored in the petition -- this case is not suitable for review on certiorari.

First, this Court lacks jurisdiction over the petition because Congress has specifically precluded this Court's review of bankruptcy abstention decisions under 28 U.S.C. § 1334(c).

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[10] Because it found that abstention was appropriate under § 1334(c)(1), the First Circuit did not address the district court's conclusion that abstention was also required under the mandatory abstention statute, § 1334(c)(2). Petitioner's attempt to infer legal conclusions about what the First Circuit "recogniz[ed]" based on its failure to reach the mandatory abstention issue (Pet. 10) is baseless.

Second, virtually all the substantive disputes between Petitioner and Respondents have already been resolved in the New Jersey Action, so that the forum-selection issue raised by Petitioner is substantially moot, and revisiting it at this point would serve no meaningful purpose.

Third, Petitioner's contentions are all unpreserved for this Court's review because he did not present any of his current arguments in any of the courts below, and many of them do not even relate to the abstention decisions whose review Petitioner is seeking.

Fourth, even apart from all these jurisdictional and procedural concerns, this case involves no issue worthy of this Court's attention. Petitioner has identified no conflict in decisions among the lower courts, no violation of any principle announced in a prior decision of this Court, no unsettled and important legal issue calling for this Court's resolution, and no departure from the "accepted and usual course of judicial proceedings" below. *See* Sup. Ct. R. 10.1. To the contrary, although Petitioner argues that abstention was improper here as a matter of law, he has not cited a single relevant authority to that effect, nor has he offered any cogent policy argument for the rule he seeks. At its heart, this case simply involves the application of well-recognized standards for discretionary abstention, as authorized by statute, to the particular, highly unusual circumstances of a single bankruptcy case.

I. THIS COURT LACKS JURISDICTION TO REVIEW THE DISTRICT COURT'S ABSTENTION DECISION

Petitioner contends that the bankruptcy court should not have been directed to abstain. Abstention in bankruptcy proceedings is expressly authorized by 28 U.S.C. § 1334(c), which provides for two types of abstention: *discretionary* abstention "in the interest of justice, or in the interest of comity with State courts or respect for State law," 28 U.S.C.

§ 1334(c)(1), and *mandatory* abstention when certain statutory prerequisites are satisfied, 28 U.S.C. § 1334(c)(2).

At least since 1990, decisions on abstention have been made by the bankruptcy court (rather than the district court) in the first instance. *See* 1991 Advisory Committee Note to Fed. R. Bankr. P. 5011(b). The bankruptcy court's decision is subject to one level of appellate review in the district court. *Id.*; *see, e.g., Farm Credit Bank v. Bott* (*In re* Stigge), 167 B.R. 961, 965 (Bankr. D. Kan. 1994). However, Congress has determined that beyond the district court level, further appellate review of these procedural decisions is not warranted: too much time should not be spent determining *which court* should decide a substantive dispute, at the expense of expeditiously resolving the merits of the dispute itself. *See Chemical Bank v. Togut* (*In re* Axona Int'l Credit & Commerce Ltd.), 924 F.2d 31, 35 (2d Cir. 1991); *see also Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 351 (1976) (similar rationale as to nonreviewability of remand orders under 28 U.S.C. § 1447(d)); *Hernandez v. Brakegate, Ltd.*, 942 F.2d 1223, 1226 (7th Cir. 1991). Accordingly, after setting out the discretionary and mandatory abstention doctrines, the abstention statute (in the form applicable to this case) provides:

> Any decision to abstain or not to abstain made under this subsection is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

28 U.S.C. § 1334(c)(2). If this proscription of review applies here -- that is, if the decisions below to abstain were "made under this subsection" -- then this Court lacks jurisdiction.

This nonreviewability provision appears in 28 U.S.C. § 1334(c)(2), the same paragraph of § 1334 that contains the mandatory abstention provision. Accordingly, this Court clearly may not review a mandatory abstention decision. *Cf. In re Parque Forestal, Inc.*, 949 F.2d 504, 511 n.8 (1st Cir.

1991) (dismissing appeal from denial of mandatory abstention pursuant to § 1334(c)(2)). Here, the district court relied on mandatory abstention as one ground for ordering the bankruptcy court to abstain. That mandatory abstention order, unreviewable by the court of appeals or this Court, will remain intact irrespective of any disposition that might be made here of Petitioner's discretionary abstention arguments, and will independently bar the bankruptcy court from taking up Petitioner's Amended Counterclaim. Under these circumstances, Petitioner's present attack on the discretionary abstention decisions is entirely academic, and this Court lacks jurisdiction over it for that reason.

Even if this case involved *only* discretionary abstention under 28 U.S.C. § 1334(c)(1), this Court would still lack jurisdiction. To be sure, the statutory proscription of review (in the form applicable to this case) is arguably ambiguous as applied to discretionary abstention, because the sentence barring review appears in § 1334(c)(2) and not in § 1334(c)(1). However, § 1334(c)(2) bars this Court's review of an abstention "decision . . . made under *this subsection*" -- not "this paragraph." As used in the United States Code, the word "subsection" refers to a principal, lettered subdivision of a section of the Code.[11] Thus, the reference in 28 U.S.C.

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[11] For example: 28 U.S.C. § 1334 is a "section" of the Code; section 1334 is divided into four "subsections" lettered (a), (b), (c) and (d); and subsection (c), in turn, is divided into two "paragraphs" numbered (1) and (2). The words "subsection" and "paragraph" are consistently used in this manner throughout the Code, including title 11 (the Bankruptcy Code) and title 28 (the Judicial Code). In particular, the words are so used in all the other provisions of title 28 that were added or rewritten by the Bankruptcy Amendments and Federal Judgeships Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which enacted § 1334(c). *See, e.g.*, 28 U.S.C. §§ 152(a)(1), 157(c)(2). The consistent usage of a term in "numerous provisions" within a particular statute is significant evidence of its intended meaning elsewhere in that statute. *Central Bank of Denver, N.A. v. First Interstate Bank, N.A.*, 114 S. Ct. 1439, 1447-48 (1994). *See also* L. Filson, *The Legislative Drafter's*

(Footnote continued)

§ 1334(c)(2) to a "decision . . . made under this subsection" refers to "subsection (c)" in its entirety -- even though subsection (c) is, in turn, divided into the two paragraphs (1) and (2) -- and thus refers to discretionary as well as mandatory abstention. The two courts that have noted the significance of the word "subsection" in this context have reached precisely this conclusion. *In re Stigge*, 167 B.R. at 965 & n.3; *Gallo v. Herpich* (*In re* Cemetery Dev. Corp.), 59 B.R. 115, 127-28 & n.32 (Bankr. M.D. La. 1986).[12] Hence, given its words' ordinary meaning, the nonreviewability language of 28 U.S.C. § 1334(c)(2) applies to abstention decisions under either paragraph of "this subsection" (c).

Accordingly, the petition for certiorari must be denied or dismissed for want of jurisdiction. At a minimum, the Court would have to expend substantial efforts resolving the jurisdictional issue before it could take up the issues Petitioner seeks to present -- efforts that there is no reason to expend because Congress has recently amended 28 U.S.C.

Desk Reference §§ 20.3, 24.9 (1992) (discussing designation of Code provisions); D. Hirsch, *Drafting Federal Law* § 5.16 (2d ed. 1989) (same).

[12] *Accord Adams v. Sidney Schafer & Assocs., Inc.* (*In re* Adams), 809 F.2d 1187, 1190 (5th Cir. 1987) ("The [district] court . . . had authority to abstain pursuant to § 1334(c)(1), hence its reasoning is not for us to review or reconsider."). There is some court of appeals authority to the contrary, holding that appellate review of discretionary abstention decisions is permitted. *Ben Cooper, Inc. v. Insurance Co. of Pa.* (*In re* Ben Cooper, Inc.), 924 F.2d 36, 38 (2d Cir.), *cert. denied*, 500 U.S. 928 (1991); *Coker v. Pan American World Airways, Inc.* (*In re* Pan American Corp.), 950 F.2d 839, 843-44 (2d Cir. 1991); *California State Board of Equalization v. Sierra Summit, Inc.* (*In re* China Peak Resort), 847 F.2d 570, 572 (9th Cir. 1988), *vacated on other grounds*, 490 U.S. 844 (1989). However, in none of these cases did the courts of appeals consider the meaning of the word "subsection" as used in § 1334(c)(2), as discussed above. Nor did any of these cases scrutinize the drafting history of the 1984 amendments to the statute, which provides strong confirmatory evidence of Congress' intent that both discretionary and mandatory abstention decisions be nonreviewable by the courts of appeals and this Court.

§ 1334 in a way that will prevent the arguable ambiguity present in this case from ever recurring. *See* Bankruptcy Reform Act of 1994, Pub. L. 103-394, sec. 104(b), 108 Stat. 4106, 4109 (removing nonreviewability language from same paragraph as mandatory abstention provision and instead placing it in a separate subdivision). Although the amendment does not apply retroactively to this case, *see id.*, sec. 702(a), 108 Stat. at 4150, its enactment eliminates any arguable need for authoritative construction of the former provision (a task for which this case would have provided a strikingly poor vehicle in any event). *See* R. Stern, E. Gressman *et al.*, *Supreme Court Practice* 172 (7th ed. 1993); *cf. Ticor Title Ins. Co. v. Brown*, 114 S. Ct. 1359, 1362 (1994) (certiorari is not granted to address an issue that will not recur in any other case).

Because this Court lacks jurisdiction, the petition for certiorari must be denied or dismissed.

II. BECAUSE THE NEW JERSEY SUPERIOR COURT HAS RESOLVED THE MERITS OF THE PARTIES' DISPUTE, THE ABSTENTION ISSUE IS LARGELY ACADEMIC

Although Petitioner grudgingly concedes that "the New Jersey action . . . is proceeding" (Pet. 11), the petition is grossly misleading in its failure to mention the key rulings that have been issued since that litigation resumed in 1993, or the effect they might have on the issues presented for review. In fact, as detailed above, the New Jersey court has already resolved substantially all of the parties' substantive inheritance and contract disputes. (*See infra*, pp. A-9-A-22). In doing so, the New Jersey court rejected almost all the very same factual and legal contentions that Petitioner asserted in his bankruptcy court Amended Counterclaim, including his contention that the 1974 Amendment was invalid, and held that Respondents are entitled to an award of litigation expenses and attorneys' fees pursuant to that contract.

The New Jersey court's rulings have substantially reduced the importance of the abstention issue in this case. Petitioner's contention that the 1974 Amendment was invalid (and therefore could not support a claim for attorneys' fees), contained in his Amended Counterclaim, has now been ruled on and rejected in New Jersey. Since the New Jersey state court's determinations are binding on the bankruptcy court, *see, e.g., Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991) (collateral estoppel principles are fully applicable in bankruptcy); *First Jersey National Bank v. Brown* (*In re* Brown), 951 F.2d 564, 570-71 (3d Cir. 1991), Petitioner's assertion that the bankruptcy court should have been allowed to decide the contract's validity in the first instance is no longer a live issue.[13] The relative unimportance of the abstention decision to the ultimate outcome of the parties' disputes, given the current procedural posture, provides ample basis for denying the writ.[14]

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[13] The only remaining issue raised by Petitioner's objection to claims -- the precise *amount* of the expenses and attorneys' fees that Petitioner must pay to Respondents -- is now under consideration in the New Jersey Action with a decision expected shortly. Following resolution of that issue, Petitioner will have the right to appeal the New Jersey Superior Court's rulings. That review must, of course, be sought within the New Jersey state appellate system, and not in a bankruptcy court or any other federal court. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) (lower federal courts cannot sit in review of state court decisions); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983). Under New Jersey practice, the pendency of appellate proceedings would not suspend the finality of the trial-court judgment for issue-preclusion purposes, in a bankruptcy court or elsewhere. *In re Brown*, 951 F.2d at 568-70.

[14] Even if the New Jersey court had not yet resolved the merits of this case and substantially mooted the abstention dispute, Petitioner's failure to seek this Court's review of the automatic stay decision would substantially limit the scope of review available on his present petition for review of the abstention decision. The district court's discussion of discretionary abstention relied heavily on its analysis in its relief-from-stay opinion issued four months earlier. This was perfectly appropriate, because the essential

(Footnote continued)

III. PETITIONER FAILED TO PRESENT ANY OF HIS ARGUMENTS IN THE COURTS BELOW

The principal contention of the petition for certiorari is that a bankruptcy court may *never* exercise its express statutory authority to abstain from resolving a state-law dispute if a party to the dispute has filed a proof of claim in the bankruptcy case, because the statute erects "an absolute bar to the exercise of discretion under 28 U.S.C. § 1334(c)(1) to abstain" under these circumstances. (Pet. 16). The first three of Petitioner's four arguments for the writ are all variations on this theme. (Pet. 11-17).

Petitioner's challenge to the legality of the discretionary abstention decision should not be considered because Petitioner failed to present his present theory to any of the courts below. Insofar as they dealt with abstention under § 1334(c)(1), Petitioner's briefs in both the court of appeals and the district court argued only that the bankruptcy court had properly exercised its *discretion* by declining to abstain. Petitioner has never before argued that there exists "an absolute bar to the exercise of discretion" applicable in this case, nor has he ever cited a large majority of the authorities on which he now relies in any of his prior discussions of discretionary abstention.[15]

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question in both cases was which court should hear and resolve the parties' substantive disputes. Once the district court (affirmed by the court of appeals) found that the New Jersey Superior Court should hear and decide the issues, it inexorably followed that the bankruptcy court should not hear and decide the very same issues, and should therefore abstain.

[15] *See Goya Foods, Inc. v. Unanue-Casal*, No. 94-1065, Brief of Debtor-Respondent-Appellant ("Pet. 1st Cir. Br.") at 27-30 (1st Cir. May 23, 1994); *id.*, Reply Brief of Debtor-Respondent-Appellant at 11-17 (July 18, 1994); *Goya Foods, Inc. v. Unanue-Casal*, No. 94-2909 (GG), Appellee's Brief on Appeal (D.P.R. Feb. 19, 1993).

For example, Petitioner framed the question before the First Circuit as "[w]hether the bankruptcy court's decision to deny [Respondents'] motion for abstention was clearly erroneous and an abuse of its discretion" (Pet. 1st Cir. Br. at 2), and he asserted that the abstention decision should be reviewed under the deferential "abuse of discretion" standard because "the factors that are supposed to dominate the decision cannot be evaluated by the reviewing court [and] the decision is supposed to be made on the basis of subjective rather than objective factors -- the individual judgment of the judge . . . rather than some articulable legal standard. . . ." *Id.* at 27, *quoting Mosey Mfg. Co., Inc. v. NLRB*, 701 F.2d 610, 615 (7th Cir. 1983) (en banc). This description is diametrically opposed to the view Petitioner now presents: that the filing of proofs of claim by two Respondents automatically barred them from asking the bankruptcy court to abstain.

It has long been this Court's salutary practice not to consider issues and arguments that went unpresented in the lower courts. *See* R. Stern, E. Gressman *et al.*, *Supreme Court Practice* § 6.26 (7th ed. 1993). It is particularly inappropriate for a petitioner to seek certiorari where his arguments in this Court not only are unpreserved, but are flatly inconsistent with the arguments that were presented below. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 38-39 & n.2 (1989). And it is extraordinarily inappropriate for Petitioner to invoke this Court's certiorari jurisdiction to avoid "erroneous precedent" (Pet. 14) on an allegedly "important issue" (Pet. 11), after contending in the court of appeals that "uniformity among decisions is not important" on the discretionary abstention issue. Pet. 1st Cir. Br. at 27, *quoting Mosey*, 701 F.2d at 615.

Petitioner's final argument is that he was somehow denied due process because the district court's relief-from-stay and abstention decisions contain language critical of Petitioner. (Pet. 18-20). This contention, too, is entirely unpreserved: Although Petitioner challenges some findings

contained in the district court's abstention opinion, he never presented his due process argument to the court of appeals. Petitioner's briefs in the First Circuit abstention appeal did not even mention the due process clause or the Fifth Amendment. Even more seriously, most of the findings to which Petitioner objects (*see* Pet. 17; *see also* Pet. 9-10) were not made in this case at all: they are found in the district court's relief-from-stay opinion, not its abstention opinion. As noted above, Petitioner never sought this Court's review in the relief-from-stay case, and his time to do so has long since expired. Petitioner's attacks on the abstention opinion are thoroughly intertwined with his criticism of the earlier decision, which is not, and cannot be brought, before this Court. Certiorari should not be granted where the Court's review would be so unduly restricted.

IV. PETITIONER'S CONTENTIONS RAISE NO SIGNIFICANT LEGAL ISSUE WORTHY OF CONSIDERATION BY THIS COURT

Even if this Court had jurisdiction and if the case presented one or more live issues properly preserved for review, Petitioner has failed to demonstrate any "special and important reasons" that this Court should grant review. *See* Sup. Ct. R. 10.1.

A. THE DECISION TO ABSTAIN REPRESENTED A ROUTINE EXERCISE OF DISCRETION

Petitioner argues that it was improper as a matter of law to direct the bankruptcy court to abstain in this case, irrespective of all the other factors that overwhelmingly counseled in favor of abstention, because two Respondents had filed proofs of claim. Petitioner's attempt to eliminate an entire category of proceedings from the bankruptcy court's statutory authority to abstain is entirely unsupported either by authority or by bankruptcy policy. Far from being constrained

by rigid rules such as the one proposed by Petitioner, 28 U.S.C. § 1334(c)(1) was intended to vest courts with wide discretion to evaluate all relevant factors before deciding whether to abstain, not to make any single factor dispositive.

The plenary scope of the discretion to abstain with which § 1334(c)(1) vests the courts was noted in a case relied on by Petitioner himself. *Wood v. Wood* (*In re* Wood), 825 F.2d 90 (5th Cir. 1987) (Pet. 13, 16). In *Wood*, Judge Wisdom explained his view that federal bankruptcy jurisdiction should be interpreted broadly, even though situations would arise where it would be inappropriate to exercise that jurisdiction at the expense of a state court, because the bankruptcy court would have the ability to abstain from any unwarranted exercise of jurisdiction:

> The district court expressed its concern that an overbroad interpretation of [28 U.S.C.] section 1334 would bring into federal court matters that should be left to state courts to decide. We have also expressed the same concern. There is no necessary reason why that concern must be met by restrictive interpretations of the statutory grant of jurisdiction under section 1334. The Act grants the district court *broad power* to abstain *whenever* appropriate "in the interest of justice, or in the interest of comity with State courts or respect for State law." The abstention provisions of the Act demonstrate the intent of Congress that concerns of comity and judicial convenience should be met, not by rigid limitations on the jurisdiction of federal courts, but by the discretionary exercise of abstention when appropriate in a particular case.

Id. at 93 (emphasis added; citations omitted). No *per se* rules are to be found in the abstention statute or elsewhere limiting the circumstances under which "the discretionary exercise of abstention" would be "appropriate in a particular case."

Although the courts have been applying the discretionary abstention provisions of 28 U.S.C. § 1334(c)(1) and its predecessor, former 28 U.S.C. § 1471(d), to a great variety of bankruptcy situations for more than fifteen years, the statute has provided no difficulties of management or administration in the bankruptcy and district courts that would require guidance from this Court. The courts have evolved a list of 12 factors relevant to discretionary abstention, first enumerated in *Republic Reader's Service, Inc. v. Magazine Service Bureau, Inc.* (*In re* Republic Reader's Service, Inc.), 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987), widely followed throughout the country, *see, e.g., In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 6 F.3d 1184, 1189 (7th Cir. 1993); *Christensen v. Tucson Estates, Inc.* (*In re* Tucson Estates, Inc.), 912 F.2d 1162, 1166-67 (9th Cir. 1990), and firmly grounded in "common sense." *Swift v. Bellucci* (*In re* Bellucci), 119 B.R. 763, 772 (Bankr. E.D. Cal. 1990). The district court's decision herein, affirmed by the court of appeals, was based in large measure on the application of these factors. (164 B.R. at 222; Pet. 13a, citing *Flores Rivera v. Telemundo Group*, 133 B.R. 674, 677 (D.P.R. 1991)).

Indeed, for all the many reasons set forth by the district court, affirmed by the court of appeals, in both their relief-from-stay and abstention decisions, this represents a paradigmatic example of a case in which abstention is warranted "in the interest of justice, [and] in the interest of comity with State courts [and] respect for State law", to allow a series of state-law issues to be resolved in a state-court case that had been pending and actively litigated for several years before the bankruptcy case and Amended Counterclaim were filed. Under circumstances like these, courts routinely lift the automatic stay of the state-court case under 11 U.S.C. § 362, and abstain from themselves deciding the identical issues to be decided by the state court. Indeed, in such a case, it is a reversible abuse of discretion for the bankruptcy court to fail to defer to the state court by lifting the stay and abstaining. *See, e.g., In re Brown*, 951 F.2d at 570; *In re Tucson Estates*, 912 F.2d at 1166-70; *Pursifull v. Eakin*, 814 F.2d 1501, 1505-06 (10th Cir. 1987).

Notwithstanding these elementary principles and their obvious applicability to this case, Petitioner asserts that the filing of proofs of claim by two Respondents automatically precluded abstention. He cites *no authority of any kind* for this view -- not a single decision of any bankruptcy court, district court or court of appeals, much less of this Court. *A fortiori*, there is no conflict of decisions on this issue. Even the bankruptcy court here, while declining to abstain, had no doubt about its discretion to do so. (*See* Pet. 29a-31a).

To be sure, bankruptcy courts will frequently choose to scrutinize objections to proofs of claim themselves. However, this practice has a "*well-recognized* exception": "when the claim under challenge is unliquidated or contingent, . . . if the claim under consideration is already being litigated in a non-bankruptcy forum, and the litigation could be speedily resolved without undue delay of the administration of the estate, it is appropriate for the Bankruptcy court to abstain...." *In re Bicoastal Corp.*, 158 B.R. 237, 240 (Bankr. M.D. Fla. 1993) (emphasis added). In other words, "[t]he fact that the dispute arises in the context of an objection to claim does not preclude abstention." *In re Denton*, 161 B.R. 987, 988 n.2 (Bankr. E.D. Ark. 1993) (abstaining under § 1334(c)(1) from resolving objection to proof of claim). Where, as here, resolution of an unliquidated claim depends upon a determination of state-law issues and a state-court judgment would provide a basis for allowing or disallowing the claim, the "*clearest case*" for abstention is presented. *Southmark Prime Plus, L.P. v. Southmark Storage Assocs. Ltd. Partnership* (*In re* Southmark Storage Assocs. Ltd. Partnership), 132 B.R. 231, 233 (Bankr. D. Conn. 1991) (emphasis added), *quoting Williams v. Associates Finance, Inc.* (*In re* Williams), 88 B.R. 187, 189 (Bankr. N.D. Ill. 1988). Or, as stated in a seminal abstention case:

> Where a claim asserted against an estate involves legal issues in which state law predominates, a claim can be litigated in state court to the

> point of judgment, with enforcement of the judgment stayed until further order of the bankruptcy court. *This result follows even though a formal proof of claim . . . has been filed against the estate.*

In re Republic Reader's Service, 81 B.R. at 426 (emphasis added).

In view of these cases, Petitioner's contention that the First Circuit's decision in this case has "carve[d] out . . . an entirely new exception to bankruptcy jurisdiction" (Pet. 11) is simply false. Far from representing an "entirely new" departure from ordinary bankruptcy procedure, the decision to abstain was a routine, fact-bound application of "well-settled" principles to the "clearest case" for a decision to abstain.

Petitioner's arguments to the contrary are (in the words of the First Circuit in a related context) "mere makeweights" to support the result he seeks. (*See infra*, p. A-5). First, Petitioner's reliance on 11 U.S.C. § 502(b), which directs the bankruptcy court to "adjudicate" proofs of claim, is clearly misplaced. (Pet. 14-16).[16] Section 502 has nothing to do with the choice-of-forum issues raised by a motion to abstain. All the cases relied upon by Petitioner in his § 502(b) argument either are irrelevant -- failing even to mention the abstention statute -- or they strongly support Respondents' position. *See Gardner v. New Jersey*, 329 U.S. 565, 583-84 (1947) (Pet. 13) (recognizing bankruptcy court's authority to abstain from addressing state-law issues raised by claim asserted against bankruptcy estate, citing *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478 (1940)); *In re Wood*, 825 F.2d at 92-93

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[16] As the cases discussed above hold, it is entirely proper for the bankruptcy court to "adjudicate" an unliquidated claim by allowing its validity and amount to be determined in a state court of appropriate jurisdiction, and then according appropriate *res judicata* effect to the resulting state-court judgment. *See, e.g., Heiser v. Woodruff*, 327 U.S. 726 (1946); *Montalvo v. Banco Comercial de Mayaguez* (*In re* Montalvo), 157 B.R. 510 (D.P.R. 1993); *In re Republic Reader's Service*, 81 B.R. at 426-27; *In re Pitts*, 31 B.R. 90, 92 (Bankr. N.D. Ga. 1983).

(Pet. 13, 16) (discussing "broad power" of bankruptcy court to abstain); *In re Nova Real Estate Inv. Trust*, 23 B.R. 62, 65-66 (Bankr. E.D. Va. 1982) (Pet. 14) ("estimating" claim pursuant to 11 U.S.C. § 502(c) to provide *interim* valuation for inclusion in reorganization plan, but noting prior decision to remand case to state court and lift automatic stay so that creditor could "proceed to liquidate his claim in the Florida [state] court").[17]

Similarly, Petitioner's second argument, that a creditor's filing of a proof of claim should automatically constitute a waiver of the right to seek abstention, is unsupported. (Pet. 14-16).[18] Once again, Petitioner offers no authority that the law is to this effect -- it clearly is not -- and no reason that it should be. Finally, Petitioner's third argument for the writ is a re-statement adding nothing to the earlier arguments. (Pet. 16-17).

The decision to abstain in this case broke no new ground: the district court, affirmed by the court of appeals, simply

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[17] The language on which Petitioner relies in *In re Wood*, 825 F.2d at 96-97, and *Gulf States Exploration Co. v. Manville Forest Products Corp.* (*In re* Manville Forest Products Corp.), 896 F.2d 1384, 1389-90 (2d Cir. 1990) (Pet. 13), dealt with the jurisdictional distinction between "core" and "non-core" matters under 28 U.S.C. § 157(b). Here, the district court properly held the dispute to be a "non-core," "related to" proceeding. (164 B.R. at 221; Pet. 10a-12a). In any event, while the status of a proceeding as core or non-core may be dispositive on a motion for mandatory abstention under 28 U.S.C. § 1334(c)(2), Petitioner properly concedes that discretionary abstention under § 1334(c)(1) can be ordered even in a core proceeding (Pet. 16), so that this issue is irrelevant here.

[18] In this regard, the cases relied on by Petitioner (*see* Pet. 14-15) indicate that a bankruptcy court will usually have *jurisdiction* to evaluate a proof of claim filed in a case before it. However, this principle has nothing to do with discretionary abstention: In seeking discretionary abstention, a party concedes (at least *arguendo*) that the bankruptcy court *has* jurisdiction, but asserts that "in the interest of justice, . . . comity with State courts or respect for State law," the court should refrain from *exercising* its jurisdiction. Cases addressing parties' constitutional rights to a trial before a jury, or before a court created under Article III (*see* Pet. 14-15), define the bounds of bankruptcy court jurisdiction; they in no way cabin the court's discretion to abstain.

applied a series of recognized standards to a particular, somewhat unusual factual setting, and determined that abstention was appropriate. Petitioner has offered no good reason for this Court to grant certiorari to review that determination.

B. PETITIONER'S DUE PROCESS CLAIM IS ALSO MERITLESS

As his final argument in support of certiorari, Petitioner alleges that he was denied due process because the district court, affirmed by the court of appeals, made findings of fact with which he disagrees. (Pet. 17-18). As noted above, Petitioner has not only failed to preserve this argument, but he offers it in the wrong case, so that his request for certiorari is meritless on its face.

A grant of certiorari to consider Petitioner's belated due process argument would also be inappropriate for a further procedural reason: the opinions below strongly suggest that the result would have been identical even if those findings of which Petitioner complains were stripped away. In lifting the stay and ordering the bankruptcy court to abstain, the district court relied heavily on many other factors germane to requests for those forms of relief, many of which are described above. The cumulative weight of these factors, discussed at length in the district court's relief-from-stay opinion (159 B.R. at 96-100) as well as its abstention opinion (164 B.R. at 222-23; Pet. 13a-15a), makes it clear that the district court would have reached the same results even if it had not found, as it properly did, that Petitioner's bankruptcy case was filed for improper purposes and was a sham.

Once again, however, even if Petitioner had properly preserved his claims and even if their resolution would affect the result of the case, Petitioner's due process argument is without substance, for there was no abridgement of Petitioner's procedural rights in the nearly four years of relief-from-stay and abstention litigation. Petitioner's cursory (three-page) due process argument offers no precedent or

policy to support its contention that a testimonial hearing (which Petitioner never even asked for in the abstention proceedings) would be required before a court may determine to abstain, pursuant to statutory authority, so as to allow another court to adjudicate substantive issues on their merits.

In deciding the relief-from-stay and abstention matters, the role of the courts below was neither to rule on Petitioner's entitlement to economic relief under the Bankruptcy Code, nor to finally adjudicate the disputes between Petitioner and Respondents. The courts were simply asked to select the court that *would* ultimately resolve the parties' inheritance and contract law contentions: Petitioner contended that the bankruptcy court should rule on the parties' state-law disputes, while Respondents contended that the long-pending New Jersey Action represented the appropriate forum to resolve them.

When called on to choose between these positions, it was entirely appropriate for the courts below to consider, as one relevant factor, whether Petitioner's bankruptcy appeared to be a legitimate bankruptcy case filed and maintained in good faith. The automatic stay under 11 U.S.C. § 362(a) acts as an injunction against the further pursuit of claims against a debtor, and where state-court litigation is involved, constitutes a rare exception to the Anti-Injunction Act, 28 U.S.C. § 2243. Petitioner's invocation of the bankruptcy court's authority to adjudicate claims similarly had the effect of ousting the state court's jurisdiction to do so in a long-pending action. These preemptions of state-court authority generally serve legitimate and important purposes for the benefit of debtors and creditors, but they cannot be justified in cases that are filed or maintained in bad faith for the primary purpose of obtaining a forum-shopping advantage, rather than the "breathing spell" and "fresh start" contemplated by the Bankruptcy Code.

The district court's view that Petitioner's did not appear to be a legitimate bankruptcy case was supported by compelling facts. *First*, the financial circumstances of the filing were

dubious on their face: Petitioner had failed to offer any reasonable accounting of the $4.3 million in cash he had received under the 1972 Agreement and 1974 Amendment, he had engaged in a pattern of highly suspicious transactions with his wife and a dummy Panamanian corporation over a period of years, and he asserted the Fifth Amendment privilege against self-incrimination at his opening examination in the bankruptcy case. *Second*, even assuming *arguendo* that the petition had been filed in good faith in the first instance, any need for bankruptcy protection evaporated less than a year later, when Petitioner's wife purchased all the liquidated, dischargeable claims against his estate and agreed not to pursue them. *Third*, the bankruptcy case was obviously being misused as a forum-shopping device. The petition was filed on the eve of a critical determination in the New Jersey Action, three full years into the litigation, by a litigant whose past record left little doubt about his willingness to use every conceivable means to obstruct and delay that action, so as to relocate the venue for his claims to a court located in Puerto Rico -- first the Puerto Rico local courts, later the United States District Court, and now the bankruptcy court.

In the absence of actual debts that Petitioner sought to discharge, the only purpose Petitioner could be seeking through his bankruptcy case was to gain an automatic stay of the New Jersey Action that represented the parties' appropriate forum, while simultaneously obtaining the Puerto Rico forum he had long sought. Tactics such as these are disfavored under any circumstances. *See, e.g., Barclay's American/Business Credit, Inc. v. Radio WBHP, Inc.* (*In re* Dixie Broadcasting, Inc.), 871 F.2d 1023, 1027 (11th Cir.), *cert. denied*, 493 U.S. 853 (1989); *Packerland Packing Co., Inc. v. Griffith Brokerage Co.* (*In re* Kemble), 776 F.2d 802, 806-07 (9th Cir. 1985). Given Petitioner's grotesque record of unabated misconduct throughout the family litigations, now in their eighth year, the time had certainly come to put an end to them once and for all.

In resolving the abstention application (like the earlier relief-from-stay application), the district court and the court of appeals properly questioned the *bona fides* of Petitioner's bankruptcy case in the course of ruling against him. However, contrary to Petitioner's suggestions (*see* Pet. 18), the findings contained in the abstention decision have *not* resulted in dismissal of his bankruptcy petition, the denial of his discharge, or the denial of dischargeability of any debt. Rather, the abstention decision had only one legal consequence: it confirmed that plenary adjudication of the parties' *substantive* disputes -- of which Petitioner has completely lost sight amidst all his procedural jockeying -- would take place in the New Jersey Action rather than the bankruptcy court. In this context, Petitioner should not be heard to urge that *more* than three and one-half years of proceedings were required before the threshold forum-selection issues could be resolved, particularly in view of Congress' commands that relief-from-stay and abstention applications are to be resolved promptly and with a minimum of delay. *See* 11 U.S.C. § 362(e); 28 U.S.C. § 1334(c)(2) (now § 1334(d)).

Petitioner concedes that this Court rarely reviews a claim of "an injustice perpetrated on a single litigant," and that that is all his due process argument represents. (Pet. 17, 19). Here, even Petitioner's individual claim of injustice rings utterly hollow given the nature of the issues, the thoroughness of the proceedings below, the clear correctness of the results reached, and the failure to raise the due process claim at any previous stage of the abstention proceedings. Certiorari should be denied.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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January 9, 1995

APPENDIX

Decisions Of The First Circuit Court of Appeals In The Relief-From-Stay Proceeding*

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

No. 93-2186

JOSEPH A. UNANUE, *et al.*,

Appellees,

v.

ULPIANO UNANUE-CASAL a/k/a CHARLES UNANUE,

Appellant.

Before

Breyer, *Chief Judge*,
Selya and Cyr, *Circuit Judges*.

ORDER OF COURT

Entered November 16, 1993

Movant/appellant Ulpiano Unanue-Casal moves for a stay pending appeal, pursuant to Fed. R. App. P. 8, of the district court order lifting the stay on proceedings in the New Jersey Superior Court. We deny the motion.

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* [Set forth here are the decisions of the First Circuit Court of Appeals in Petitioner's appeal from the "relief-from-stay" decision of the district court reported at 159 B.R. 90 (D.P.R. 1993). Petitioner did not seek this Court's review of any of these rulings.]

First, for the reasons stated by the district court in its opinion dated August 3, 1993, movant has not established a sufficiently strong likelihood of success on the merits. Movant's contention that the district court erred in not remanding the case to the bankruptcy court after it found that appellees had met their *prima facie* burden of proof is not convincing. Before making its decision concerning the lifting of the stay in the New Jersey action, the bankruptcy court had already decided that the only evidence that movant proffered at the bankruptcy hearing was irrelevant. Since all relevant evidence was before both the bankruptcy and the district courts, a remand would serve no useful purpose. We also note that the record strongly suggests that the movant has been manipulating the bankruptcy process to avoid determination of the merits of the underlying dispute. *Cf. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 814 F.2d 844, 847 (1st Cir. 1987) (affirming decision granting relief from automatic stay without any testimonial hearing on ground that debtor was misusing bankruptcy protection to avoid decision on merits of dispute).

Second, movant has failed to establish that he would suffer any irreparable harm if the stay is not granted. Denial of the stay would only allow the New Jersey action to proceed.[1] Movant has a right to participate in that action and to avail himself of the state appellate process should he so choose. Being required to litigate in state court rather than bankruptcy court does not constitute irreparable harm. *In re Thomases*, 28 B.R. 961, 962-63 (Bankr. S.D.N.Y. 1983). Nor

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[1] Movant's contention that his interests will not be represented in the New Jersey action because the bankruptcy trustee is unwilling or unable to appear is without merit. The New Jersey court has indicated that it would permit movant to appear on his own behalf. As the district court wrote, and as the record amply supports, movant "has demonstrated no problems hiring numerous lawyers and law firms for all of his suits."

is the fact that movant's appeal in this court may be mooted by the New Jersey action a basis for a stay without a showing that a stay is otherwise appropriate. *See Ramsdell v. G.H. Coffey Co.*, 632 F.2d 162 (1st Cir. 1980) (denying stay pending appeal, even though case may become moot, since there was no other showing of entitlement to extraordinary relief). Movant has made no such showing here.

Movant's request for oral argument is *denied.* Movant's request for a stay pending appeal is *denied.*

By the Court:

/s/ FRANCIS P. SCIGLIANO
Clerk

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

No. 93-2186

IN RE ULPIANO UNANUE-CASAL,
a/k/a CHARLES UNANUE,

Debtor.

JOSEPH A. UNANUE, *et al.*,

Petitioners, Appellees,

v.

ULPIANO UNANUE-CASAL
a/k/a CHARLES UNANUE,

Respondent, Appellant.

Appeal from the United States District Court
for the District of Puerto Rico

[Hon. Gilberto Gierbolini, *U.S. District Judge*]

Before

Selya, *Circuit Judge,*

Coffin and Bownes, *Senior Circuit Judges.*

Per Curiam. This is the latest chapter in a dispute that has been litigated with fierce tenacity by the debtor, Ulpiano Unanue-Casal, a/k/a Charles Unanue. *See, e.g., In re Unanue-Casal,* 998 F.2d 28 (1st Cir. 1993); *Unanue-Casal v. Unanue-Casal*, 898 F.2d 839 (1st Cir. 1990). Although tenacity is to be admired, it is sometimes misplaced. So it is here.

We have carefully reviewed the voluminous record and the parties' briefs, and have duly considered the matters raised at oral argument. In the end, we are persuaded that the district court did not err in reversing the bankruptcy court's refusal to lift the automatic stay, 11 U.S.C. § 362. The district court's well-conceived opinion, *see In re Unanue-Casal*, Civ. No. 92-1796 GG (D.P.R. Aug. 3, 1993) (unpublished) [now reported at 159 B.R. 90], adequately elucidates the reasoning that is controlling on the central issue presented by this appeal, and no useful purpose would be served by rehearsing that reasoning. Similarly, we see no basis for a remand to the bankruptcy court for further exploration of this issue. And, finally, appellant's other arguments are mere makeweights.

We need go no further. Because this appeal presents no substantial question of law or fact, we summarily affirm the judgment below.[1]

Affirmed. See 1st Cir. Loc. R. 27.1

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[1] We take no view of appellees' claim that the appeal is moot, as the appeal is impuissant in any event.

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

No. 93-2186

IN RE: ULPIANO UNANUE-CASAL,
aka CHARLES UNANUE,

Debtor.

JOSEPH A. UNANUE, *et al.*,

Petitioners, Appellees,

v.

ULPIANO UNANUE-CASAL
aka CHARLES UNANUE,

Respondent, Appellant.

JUDGMENT

Entered: May 12, 1994

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: **The judgment is affirmed.**

By the Court:

/s/ FRANCIS P. SCIGLIANO
Clerk

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIT

No. 93-2186

JOSEPH A. UNANUE, *et al.*,

Appellees,

v.

ULPIANO UNANUE-CASAL a/k/a CHARLES UNANUE,

Appellant.

ORDER OF THE COURT

Selya, *Circuit Judge*,
Bownes, *Senior Circuit Judge*,
Coffin, *Senior Circuit Judge*.
Entered: June 3, 1994

Upon consideration of appellant's petition for rehearing,

It is ordered that the said petition be denied.

By the Court:

/s/ FRANCIS P. SCIGLIANO
Clerk

November 19, 1993 Opinion and Order of the New Jersey Superior Court

In the Matter of the Settlement of the Accounts of JOSEPH UNANUE and FRANK UNANUE, Trustees Under the Trust Agreement Dated November 16, 1970, as Amended, By and Among PRUDENCIO UNANUE, as Grantor, and PRUDENCIO UNANUE, JOSEPH UNANUE and ANTHONY UNANUE, as Trustees of Sixteen Trusts Thereunder.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIV.: BERGEN COUNTY DOCKET NO. M-128817

November 19, 1993
Hackensack, New Jersey

BEFORE:

THE HONORABLE ARTHUR J. LESEMANN, J.S.C.

ORAL OPINION OF THE COURT*

THE COURT: We've had argument now that has gone on for close to two hours. I have here in my hand that I'm holding the briefs and appendices that were submitted in connection with the present proceeding, that being only, of course, a small fraction of what is really involved in this case.

As I read all of this material I had the strange feeling that we were almost over-intellectualizing something that seems relatively simple. * * * I think to an extent there has been something of an over-intellectualization of this matter. And I

* [The court delivered its opinion orally at the conclusion of argument on cross-motions for summary judgment. Immaterial typographical errors in the court reporter's transcript have been corrected.]

don't mean to be critical when I say that because I understand why. The Unanue family, I would think, should be shell-shocked by this time. * * *

We begin with a trust agreement and a Will in 1970 and, of course, that preceded by actions in 1969 involving the removal of Charles Unanue by Prudencio.

Now, whether the present difficulties had a genesis even before that, I don't know. In 1972, 21 years ago, it seemed as though the matters which had torn the family apart had been settled by comprehensive agreements that called for Charles to be paid 4.5 million dollars. Well, I guess the ink hardly dried before everybody was going around again in 1973, and then in July 1974 we had the agreement which some people have spoken about so much here today.

It's difficult for me to conceive of how anyone could make the language of the 1974 agreements any broader, definitive and all-inclusive than they were. To begin with, the agreement began by a reference to a desire to finish these matters once and for all. The agreement, of course, sets out payments of substantial monies to Charles Unanue, something over four million dollars.

In Section 6.03, which is entitled "Covenant not to Contest Disposition of Property by Prudencio Unanue." That is the language I referred to. Charles covenants and agrees -- read the next language -- for the benefit of the companies, the additional companies, Charles' brothers, Prudencio and their estates, heirs, beneficiaries, et cetera -- he agrees for the benefit of all of those entities, he irrevocably disclaims, renounces any and all interest he may have or may hereafter have in the assets or estate of Prudencio Unanue, whether under any will, trust, by intestacy, by virtue of relationship, by other operation of law or otherwise.

It's an exercise in legalese, designed to see whether there is any conceivable word that one could think of that's not covered in this, and I think whoever wrote it passed the test. You can't think of anything else you could put in there to make it any more inclusive than that.

If you move on after the beginning portions of 6.03, you come to extraordinary provisions, subparagraphs A and B. These say -- well, subparagraph A starts this way: In the event that Charles receives in any way, any stock or interest in any of the companies, he agrees to immediately sell it. And there is a provision for fixing the price.

Subparagraph B contains another provision. If in any way Charles gets any stock or any interest in these companies, he's going to sell it immediately back to the company.

In other words, in no way whatsoever is he to have any ownership in the companies, nor, of course, is he to have any claim to any interest that Prudencio had or Prudencio's estate had.

Then in Section 6.08 we have the covenant not to sue which is really a repetition of what I already said, and Charles agreed that he would forever refrain from instituting and prosecuting any suit against the company, Charles' brothers, Prudencio, any of their estates.

It's difficult to understand why, in the light of that kind of language, and the receipt of four million dollars, we should even be here today. I confess that after I heard of Judge Kole's decision on the domicile question, my conclusion, my initial conclusion was that this matter was now finished. And I assumed I would have some formal document or other to sign, but surely the only issues in the case were now put to rest.

I understood the original claim didn't seem to me to have much merit, but I understood the claim that if Prudencio was indeed a domiciliary of Puerto Rico at the time of the trust and at the time of his death, then Puerto Rican law would govern the trust and the Will. Puerto Rican law, I was told, had the forced heirship concept, and if Puerto Rican law governed, then that entire settlement was subject to being set aside.

And, of course, it's a familiar principle that we live with that normally it's law of the place where one is domiciled at the time of death governs his Will.

Well, as we know in a decision that went for over 100 pages, which is some sort of record in terms of trial time in this courthouse, 147 pages, Judge Kole found that both critical times, the date of the trust and the date of the death, Prudencio was, and for many, many years, had been a domiciliary of New Jersey.

Now, of course, we have another contest. We have a contention that, in essence, Prudencio cheated his wife out of her interest in the * * * [c]onjugal partnership, and what we have is Charles Unanue flatly and unequivocally challenging Prudencio's right to dispose of his assets as he chose to do.

How one can justify that in view of the express language of the 1974 agreements in which Charles agreed in about eight different ways never to do that, is beyond me.

I am satisfied, without any question or reservation, that Charles Unanue is barred by the 1974 agreements from even raising the attack based on the alleged deprivation of his mother by his father.

Frankly, it's a little difficult to listen to claims of "fraud on my mother" to use Charles Unanue's language, and Mrs. Unanue is not here claiming this fraud and to pretend to

accept the fiction that in some way Charles Unanue is defending the rights of his mother or is concerned about a fraud on his mother is, of course, absurd.

The claim is being submitted as a method by which Charles Unanue is attempting to do precisely what he agreed in 1974 that he would never do. And, of course, we have the fact that in 1974 Charles Unanue was paid something over four million dollars in consideration for his promise not to do that.

The presentation of a few moments ago in which Mr. Unanue talked about economic duress was, frankly, mind boggling. I have never quite heard anybody say that he really didn't get much because it's almost a quote to say he netted a little over two million dollars which, quote, "lasted a few years." That's a difficult concept to accept. It's particularly difficult if it's being submitted as a basis for my refusing to enforce this agreement or my finding some form of economic duress.

The argument as to why I should not enforce the 1974 agreement, of course, is based on the claim that I should apply Puerto Rican law. The claim is that the Puerto Rican law would invalidate the 1974 agreement. I find absolutely no basis on which I should apply -- for me to apply Puerto Rican law to invalidate the 1974 agreement.

First of all, there is a clear provision in that agreement that the parties agree that the agreement shall be governed by New York law.

Now, on the face of things, I see no reason whatsoever why I should decline to enforce that. Admittedly, there could be circumstances when such a freely negotiated choice of law provision might be ignored by a court. There could conceivably be circumstances which so strongly argue for application of the law of some other jurisdiction that a judge

might say that notwithstanding the parties' selection of the law of one state, I will not apply that. That is clearly not this case. There are clearly, and without contradiction, substantial contacts with the State of New York in addition to contacts with the State of New Jersey.

Certainly Goya Foods was a key part of that entire agreement. Goya was a New York corporation. Goya was primarily located in the State of New York. Excuse me. The corporation was located in New York. Mr. Unanue himself was at that time a domiciliary of New Jersey, not New York but certainly a state with a body of law virtually identical with that of New York as concerns the issues of which we're talking.

There was litigation in the federal courts of New York which was being settled and resolved by this agreement. So clearly there were significant contacts with the State of New York.

Further, we have the policy of this forum state. I am sitting in a court in New Jersey and I cannot ignore the policy of this state. If it were clear, unambiguous and the reasons were compelling as to why I had to apply the law of Puerto Rico, of course I would do so, but to do so would certainly violate some strong, important precepts of the law of this state and to apply the law of New York would not violate those precepts.

One of the strong precepts of the law of this state is that when one freely enters into an agreement and enjoys the benefits of that agreement, one should not be free many years later to attempt to renounce that agreement, to attempt to set aside the agreement and to renege on all of the obligations that one has undertaken under that agreement, particularly when one has received some four million dollars.

Another strong precept of the policy of this state is the right of any domiciliary of this state to dispose of his assets as he sees fit.

Now, an essential part of that 1974 agreement and a critical part of it was the undertaking of Charles Unanue not to challenge Prudencio's right to exercise that New Jersey right that one has to dispose of one's assets as one chooses.

Were I to apply Puerto Rican law, I would also have to set aside, if I accept Mr. Unanue's argument, that strongly held principle of this state.

It would be difficult to conceive of or create an argument to set aside this agreement if one did it in 1975, 1976, 1977. To do it in 1986 or 1987 is virtually impossible. We heard Mr. Unanue address the question of why he delayed in launching this attack, and frankly, the reasons, stated simply, didn't constitute any reasons.

He contended, and I'm sure it's true, that Goya Foods and Mr. Unanue's brothers had substantial assets, and I discount the statement about political influence. I don't know what that means. Certainly they had assets, but so did Mr. Unanue. He had four million dollars worth of assets and if he were determined to attack this agreement, even if he only had two million dollars left after paying the other bills, that certainly would have financed a proper attack on the agreement.

It was interesting that one of the other reasons -- incredibly as it seems, incredibly as it sounds -- one of the reasons why he didn't launch an earlier attack, he said, was because he would have had to pay back the money. That I find mind boggling. Of course he would have had to pay back the money. That's exactly the point and that's exactly why a court should be extremely reluctant to entertain any attack such as this at this time.

Claims of duress, in short, are submitted in conclusory language without any substance whatsoever. Claims of fraud are submitted on the same basis.

I note, incidentally, that much of the argument that was submitted this afternoon by Mr. Unanue were based on statements not in the record, statements which were not even included in the brief that was submitted. I chose to accept them but many of them are simply without foundation.

I am satisfied that at all relevant times, as Judge Kole found, from 1929 on, Prudencio Unanue was a domiciliary of this state. I am satisfied, without any question, that the applicable law which governs disposition of assets is not the law that was in effect in a state where one married many years before.

Rather, the argument submitted by Mr. Griffinger in his brief is correct. It is virtually the unanimous rule in this country, and just about every state I guess that has considered the issue, in all of the treatises and the Restatement of Conflict of Laws, that the law that governs the ownership of assets is the law of the state one lives in, one is a domiciliary of, at the time one acquires the asset.

Simply because Prudencio and Carolina were married in Puerto Rico in the 1920's or before, does not mean that the law of Puerto Rico governs their acquisition of assets for the rest of their lives. Similarly, the fact that they were citizens of Spain at that time certainly does not govern their acquisition of assets for the rest of their lives.

As noted, Prudencio was a domiciliary of this country and the state of New Jersey since at least 1929. There is no indication that the assets in question were received before 1936. One could take 1936 as a base year in view of the bankruptcy of Prudencio, and certainly the acquisition of

assets thereafter while Prudencio was a domiciliary of New Jersey is governed by the law of New Jersey.

Those assets did not become subject to conjugal partnership laws of Puerto Rico simply because the couple had been married there many years before but were no longer domiciliaries of Puerto Rico.

I'm also satisfied that even if one were to apply the law of Puerto Rico under the case discussed and analyzed in the reply brief submitted by the beneficiaries, and one were to apply the tests set out in the *Toppel* case in which one seeks the greatest contacts with the transaction, the most rational conclusion is that the law of New Jersey and not that of Puerto Rico would determine whether assets were or were not subject to conjugal partnership laws of Puerto Rico.

The two parties, Carolina and Prudencio, were domiciliaries of New Jersey. Their business was primarily located in New York or New Jersey. They had become citizens of the United States. They were not domiciliaries of Puerto Rico and therefore, even under that test, I would find again that the law of New Jersey rather than that of Puerto Rico applies.

In view of all of the foregoing, I will sign an order first approving the accounting that has been submitted. The accounting was satisfactory and is approved.

The only challenge to the accounting is based on the arguments of Charles Unanue which I have already addressed and if there are some that I neglected to address, let me just note that I have considered them, I have not overlooked them, and it's only because of the very broad approach that was submitted by Mr. Unanue this afternoon that I may overlook specific comment on some of them.

With respect to all of the arguments submitted, I am satisfied they are without merit. None should stand in the way or will stand in the way of my approval of the accounting.

I'm satisfied that the 1974 agreement is valid, is enforceable. I'm satisfied that all of the attacks on that agreement, all of the attacks on the trust that precedes the 1974 agreement -- the 1970 trust that is -- or any attack on the disposition provisions of the Will of Prudencio Unanue, if there was any of that, all of them are without merit and must be rejected.

Claims of fraud, conspiracy, duress are all rejected as being without merit.

The assets with which we are concerned are not subject to the law of Puerto Rico concerning conjugal partnership. They are subject to the laws of this state which, of course, do not include that concept.

The 1974 agreement, as I've said, not only bars Charles Unanue's attacks, direct attacks on the trust, on the Will, or any other disposition by Prudencio. It also bars the challenge clothed in an attack seeking to enforce rights of the late Mrs. Unanue. That is nothing more than an indirect method of attempting to accomplish what Charles Unanue is barred from doing directly.

I have a form of order that was submitted.

* * *

[The court then signed the Order set forth on the next page.]

In the Matter of the Settlement of the Accounts of JOSEPH UNANUE and FRANK UNANUE, Trustees Under the Trust Agreement Dated November 16, 1970, as Amended, By and Among PRUDENCIO UNANUE, as Grantor, and PRUDENCIO UNANUE, JOSEPH UNANUE and ANTHONY UNANUE, as Trustees of Sixteen Trusts Thereunder.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIV.: BERGEN COUNTY DOCKET NO. M-128817

Civil Action

ORDER

This matter having been opened before the Court on the joint application of the Trustees, the Beneficiaries, the guardian *ad litem* for Jorge Unanue, and Goya Foods, Inc., and the Court having directed the submissions of all interested parties in accordance with its Order dated October 15, 1993, and a hearing having been held before the Court on November 19, 1993 with the attorneys for all parties to this action appearing, to wit, Quirk & Gallagher, attorneys for the Trustees (N. Patrick Quirk, Esq., appearing); Crummy, Del Deo, Dolan, Griffinger & Vecchione, A Professional Corporation, attorneys for the Beneficiaries (Michael R. Griffinger, Esq., appearing); Durkin & Boggia, Esqs., guardian *ad litem* for Jorge Unanue (Martin T. Durkin, Esq., appearing); Saiber Schlesinger Satz & Goldstein, attorneys for Goya Foods, Inc. (David M. Satz, Jr., Esq., appearing); and Charles Unanue appearing *pro se*; and the Court having heard

and considered oral argument, and having read and considered all the papers and exhibits submitted;

IT IS on this 19th day of November, 1993:

ORDERED, that the Second Accounting of Joseph Unanue and Frank Unanue, Trustees under the Trust Agreement dated November 16, 1970, as submitted with the Verified Complaint and as supplemented and amended through and including June 30, 1993, be and hereby is approved as filed; and it is

FURTHER ORDERED, that this Court finds, determines and declares that Charles Unanue and the bankruptcy estate of Charles Unanue, each had and has no right whatsoever to receive any assets from Prudencio Unanue's estate or from the Trust created by Prudencio Unanue on November 16, 1970, or from any of the follow-on trusts created under said Trust; it being specifically found that the fifty-three (53) shares of Goya Foods, Inc. stock placed into said Trust by Prudencio Unanue and administered under the Trust Agreement were solely the property of Prudencio Unanue and were properly included in the Trust and that Charles Unanue and the bankruptcy estate of Charles Unanue have no interest therein, direct or indirect; and it is

FURTHER ORDERED, that the final paragraph of this Court's Order of December 7, 1987 and paragraph 5 of this Court's Order of January 4, 1988 are hereby vacated; and it is

FURTHER ORDERED, that the Trustees are hereby expressly authorized and directed to distribute forthwith from the follow-on trusts the property interests of each Beneficiary in each such trust to such Beneficiaries as have attained the age of twenty-five (25) years; and it is

FURTHER ORDERED, that on Charles Unanue's Amended Counterclaim against Joseph Unanue, Frank Unanue *et al.*, as corrected by letter dated January 5, 1990, judgment be and hereby is entered in favor of the counterclaim defendants and against Charles Unanue on the merits of said Counterclaim; and it is

FURTHER ORDERED, that this Court finds, determines and declares that the contract known as the "Amendment dated July 31, 1974 to Agreement dated June 9, 1972 for Sale of Interests of Charles Unanue in Goya Foods, Inc. and Affiliated Companies," and each and every provision thereof, was and is valid and enforceable and that Charles Unanue and the bankruptcy estate of Charles Unanue each are bound thereby; and it is

FURTHER ORDERED, that this Court finds, determines and declares that the contract known as the "Agreement dated June 9, 1972 for Sale of Interests of Charles Unanue in Goya Foods, Inc. and Affiliated Companies" (except insofar as it was expressly modified or superseded by the 1974 Amendment), and each and every provision thereof, was and is valid and enforceable and that Charles Unanue and the bankruptcy estate of Charles Unanue each are bound thereby; and it is

FURTHER ORDERED, that this Court finds, determines and declares that Charles Unanue has materially breached and continues in material breach of the 1974 Amendment by reason of his violations of Sections 6.02, 6.03, 6.04 and 6.08 thereof in this action and in other litigations, and the Court reserves jurisdiction for the purpose of determining the appropriate remedy or remedies for Charles Unanue's breach of contract; and it is

FURTHER ORDERED, that Charles Unanue's Cross-Motion dated November 8, 1993 for the relief requested therein be and it hereby is denied in its entirety; and it is

FURTHER ORDERED, that on defendant Charles Unanue's Counterclaim against Goya Foods, Inc. *et al.* judgment be and it hereby is entered in favor of the counterclaim defendants and against Charles Unanue on the merits of said Counterclaim.

/s/ ARTHUR J. LESEMANN, J.S.C.

(3)

No. 94-1025

Supreme Court, U.S.
FILED
FEB 10 1995
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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PETITIONER'S REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1025

ULPIANO UNANUE-CASAL, a/k/a CHARLES UNANUE,
Petitioner,

v.

GOYA FOODS, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

---

PETITIONER'S REPLY BRIEF

ARGUMENT

Respondents' opposition brief is a wholesale revision of the legal, factual and procedural history of this case that ultimately illustrates the important unresolved questions of federal law which should be addressed by this Court. In an effort to divert the Court's attention from the substantive issues raised in the petition, Respondents' contend that the Court has no jurisdiction, that Petitioner failed to preserve his arguments below and, finally, that the abstention issue is largely academic by virtue of recent decisions rendered in the New Jersey action. As illustrated below, these contentions are erroneous and provide no substantive response to the primary legal issues presented in the petition.

I. THIS COURT HAS JURISDICTION TO REVIEW THE LOWER COURT'S ABSTENTION DECISION.

Respondents' argue that this Court has no jurisdiction to consider the issues raised in the petition by virtue of 28 U.S.C. § 1334(c)(2) which provides, in part, that "[a]ny decision to abstain or not to abstain made under this subsection is not reviewable by appeal. . . ." Respondents' jurisdictional hypothesis rests on the contention that because the word "subsection" allegedly is used in the Judicial Code to refer to a principal, lettered subdivision of a section, the appellate ban described in (c)(2) encompasses every abstention decision authorized in section 1334(c) including those based on (c)(1). Although this argument has superficial appeal, it ultimately rests on hypertechnical semantic gymnastics at odds with the plain meaning of the words used in 28 U.S.C. § 1334(c), with its substantive content and with the appellate decisions considering its meaning. It should, accordingly, be rejected by this Court.

A common sense, ordinary interpretation of the word "subsection", as it appears in section 1334(c)(2), reveals that its appellate ban is limited to those decisions authorized by the specific provision in which the ban appears, namely, (c)(2). Decisions resting on (c)(1), which is a separate, independent statutory subsection, are not, therefore, subject to the appellate limitations of (c)(2). Indeed, as Respondents' grudgingly concede, this is the conclusion reached by every circuit court which has addressed this issue. *See In The Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 6 F.3d 1184 (7th Cir. 1993); *In re East Port Associates*, 935 F.2d 1071 (9th Cir. 1991); *In re Ben Cooper, Inc.*, 924 F.2d 36 (2d Cir.), *cert. denied*, 500 U.S. 928 (1991); (Brief in Opp., p. 15 n.12). These decisions reflect the understanding that the semantic analysis urged by Respondents

"strains any logical reading of section 1334(c)(2) and takes the word 'subsection' entirely out of contet." *In re Nathanial Williams,* 88 B.R. 187, 188 (Bankr. N.D. Illinois 1988). The First Circuit decision in this case, rendered on the merits of the district court's discretionary abstention analysis, implicitly recognizes the strength of these appellate precedents.[1] Thus, no fewer than four appellate courts have considered, on the merits, appeals from discretionary abstention decisions founded on section 1334(c)(1). This Court should do the same.

Respondents' interpretation should be rejected for the additional reason that it fails to recognize the distinct substantive content of the abstention provisions at issue. 28 U.S.C. § 1334(c) authorizes two very different types of abstention, arising in two very different types of cases. Subsection (c)(1) relates to the unusual case of a district court exercising its discretion to abstain from adjudicating an essential "core" bankruptcy matter. Subsection (c)(2) does not vest the district court with discretion but, rather, directs the court to abstain when the issue to be resolved is "non-core" and arises under state law. Because these two types of abstention are dramatically different, and implicate different policy considerations, it is logical to conclude that Congress provided litigants with separate appellate remedies arising out of decisions made under each separate subsection. The interpretation urged by Petitioner recognizes this analytic distinction and is thus consistent with the substantive content of the statute. On the contrary, Respondents' theory offers no explanation as to why Congress would treat these distinct situations in exactly the same manner or why Congress would bury a comprehensive all encompassing appellate ban in the second sentence of an isolated statutory subsection. The simple answer, as provided by the ordinary interpretation

---

[1] Respondents' similarly urged the First Circuit to dismiss petitioner's appeal on the basis of the jurisdictional limitations set forth in 28 U.S.C. § 1334(c)(2). The First Circuit, by considering the appeal on the merits, rejected Respondents' position.

of the words contained in the statute, is that Congress did not do so.

Indeed, this conclusion is buttressed by the Bankruptcy Reform Act of 1994 ("Act"). A careful reading of the amendments to the Bankruptcy Code contained in the Act reveals that, contrary to Respondents' assertions, the word "subsection" does not always solely refer to a principal, lettered subsection of a statute. Rather, the Act quite clearly reflects that in the context of the abstention statute, Congress referred to (c)(2) as an independent "subsection" within the overall statute. Specifically, in Section 104(b) of Pub. L. 103-394, Congress amended section 1334 by specifying amendments to "subsection (c)(2)". Congress did not refer to amendments to "paragraph (2) of subsection (c)" as Respondents' theory would require. Thus, the most recent example of Congress' use of the word "subsection" directly contradicts Respondents' primary jurisdictional contention.

Respondents also contend that because the Bankruptcy Reform Act of 1994 bars appellate review of most bankruptcy abstention decisions, the need for the intervention of this Court has been negated. Again, the exact opposite is true. The need for the intervention of the Court has been heightened for the very reason that the important issue of statutory construction addressed in the petition may avoid review in the future by virtue of Congress' sweeping amendments to the Bankruptcy Code. The erroneous legal application of 11 U.S.C. § 502(b) is thus capable of repetition but avoiding review. *See Moore v. Ogilvie*, 394 U.S. 814 (1969). Put differently, this may be the last opportunity the Court has to provide clear guidance concerning the interaction of two important federal statutes.

Finally, Respondents' entire jurisdictional thesis reveals a studied ability to avoid the import of Petitioner's primary legal argument which holds that 11 U.S.C. § 502(b) represents a nonwaivable mandate to the bankruptcy court

to determine objections to proofs of claim. This mandate divests the bankruptcy court of discretion, in the first instance, to abstain from adjudicating an objection to a proof of claim, thus rendering Respondents' jurisdictional argument irrelevant.

II. THE NEW JERSEY COURT HAS NOT AND CANNOT RESOLVE THE MERITS OF THE DISPUTE.

Respondents' next contend that the issues presented in the petition are moot because "substantially all of the parties' substantive inheritance and contract disputes" have been resolved by the New Jersey court. (Brief in Opp., p. 16). This assertion is factually inaccurate and is an attempt by Respondents to avoid the ramifications of their own voluntary submission to bankruptcy jurisdiction. It provides no support for denying Petitioner's request that a writ of certiorari be issued.

While the New Jersey court has certinly decided a number of important issues relating to Petitioners' estate, including the enforceability of the Penalty Clause under New Jersey law,[2] it has not decided, nor can it decide, the "core" bankruptcy issues raised in the objection to the Goyas' proofs of claim filed by Petitioner and Trustee Quiros-Lopez. (*See* Pet., pp. 11-16.) These objections raised the following seven issues: (1) the claims were fraudulent and overstated; (2) the Goyas refused to provide evidence to substantiate the amounts that they allegedly paid as attorneys fees; (3) the claims included payments by the Goyas to attorneys who represented clients who were not signatories to the 1974 Amendment; (4) the claims included pre and post petition attorneys fees; (5) the claims included estimated, anticipated future attorneys fees; (6) the claims were contingent and unmatured and should be liquidated by the bankruptcy court

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[2] The court applied New Jersey law even though the contract was executed and performed in Puerto Rico and contains a New York choice of law provision.

in order to afford Petitioner complete relief; and (7) the Penalty Clause upon which the claims were based is void as against the public policy of Puerto Rico and, if applicable, New York. Five of these issues (1, 2, 4, 5 and 6) were not before the New Jersey court and consist of matters that lie exclusively within the bankruptcy court's jurisdiction and mandate under 11 U.S.C. § 502(b). Respondents' contention that these issues have been resolved by the New Jersey court rendering the petition moot is, therefore, without factual or legal support. Indeed, in making this assertion, Respondents' are careful to avoid explaining the New Jersey court's authority to render a decision in this essential federal area. Because it cannot, the petition raises important unresolved issues of federal law relevant to the ultimate disposition of this matter. This Court should, therefore, intervene to reestablish procedural order to a proceeding which threatens to establish jurisdictional precedents unimagined by the drafters of the Bankruptcy Code.

III. PETITIONER RAISED HIS ARGUMENTS BELOW.

Respodents' final effort to avoid confrontation of the important federal issues raised in the petition is the suggestion that Petitioner failed to raise his arguments in the court below. This is Respondents' most egregious effort to rewrite history and requires little discussion.

As Respondents recognize, Petitioner's primary contention is that 11 U.S.C. § 502(b) is an express statutory mandate to the bankruptcy court to determine objections to voluntarily filed proofs of claims.[3] This argument was

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[3] Respondents' framing of the issue illustrates their concerted effort to mold the facts and applicable legal principles to suit their arguments. For example, Respondents write that Petitioner argues that "a bankruptcy court may *never* exercise its express statutory authority to abstain from resolving a state-law dispute if a party to the dispute has filed a proof of claim. . . ." (Brief in Opp., p. 18). Again, this is untrue. Petitioner asserts that, in the context of an objection to a proof of claim, the bankruptcy court is duty bound

raised below. (*See* 1st Cir. Br., pp. 21, 23-24; 1st Cir. Reply Br., p. 8; 1st Cir. Pet. for Reh., pp. 4-5). Petitioner also addressed in the First Circuit the question of the district court's unrestrained penchant to reach factual conclusions without the support of cognizable evidence. (*See* 1st Cir. Reply Br., p. 16; 1st Cir. Pet. for Reh., pp. 7-8). The facts underlying petitioner's due process argument were, therefore, before the First Circuit.

Finally, the district court's *sua sponte* determinations regarding Petitioner's bankruptcy filing has so affected the "fairness, integrity [and] public reputation" of the proceeding below such that the intervention of this Court would be appropriate *even if* Petitioner did not raise the facts supporting his due process argument below. *See United States v. Atkinson*, 297 U.S. 157, 160 (1936). Indeed, it is significant to note that Respondents do not dispute Petitioner's contention that the district court made vital factual findings without the benefit of testimony and without the benefit of a factual record. Given this admission, Respondents' effort to avoid scrutiny of this due process violation seems all the more strained and disingenuous.

IV. THE DECISION TO ABSTAIN WAS NOT A ROUTINE EXERCISE OF DISCRETION.

Respondents' substantive analysis relies upon inapposite authority and unavailing precedent. In an effort to convince this Court that decisions to abstain from adjudicating a voluntarily filed proof of claim are routine and ordinary, Respondents cite three bankruptcy court opinions. (Brief in Opp., p. 23). These decisions are factually distinguishable and do not address the specific legal issue presented for consideration by this Court.

In re Bicoastal Corp., 158 B.R. 237 (Bankr. M.D. Fla. 1993), the leading authority relied upon by Respondents,

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by 11 U.S.C. § 502(b) to determine the objection in the bankruptcy proceeding.

arose in the context of a motion to abstain in a confirmed Chapter 11 case in which the debtor had filed an objection to a claim filed by a potential creditor. The bankruptcy court denied the creditor's motion and noted that "the allowance or disallowance of a claim is clearly a core matter and thus *should* be heard by the Bankruptcy Court. . . ." *Id.* at 239 (emphasis added). The court further explained that this was the "general rule" followed in bankruptcy proceedings. Nevertheless, it stated that there was a "well-recognized" exception which allowed the liquidation of an unliquidated claim in a non-bankruptcy forum, leaving the "ultimate determination of the allowance or disallowance of the claim" to the bankruptcy court. *Id.* at 240.

This case is wrongly decided. First, the bankruptcy court offered no authority for its sweeping conclusion that there was a "well-recognized" exception to the principle that claims "should" be heard by the bankruptcy court. This dearth of authority renders the *Bicoastal* court's statement of the law highly suspect. Moreover, the court's jurisdictional analysis is compromised by the fact that it did not utilize the appropriate legal standard set forth in 11 U.S.C. § 502(b) when considering its authority to abstain from deciding an objection to a proof of claim. This standard provides that the bankruptcy court "shall" determine objections to proofs of claims, not that it "should". The court's failure to consider this relevant statutory mandate in its abstention analysis renders *Bicoastal* unavailing and suspect authority.

The same factors which diminish the impact of *Bicoastal* also renders *In re Denton,* 161 B.R. 987 (Bankr. E.D. Ark. 1993), irrelevant to this petition. *Denton* addressed whether a bankruptcy court should abstain from determining, under state law, the impact of the action of one state agency upon another. In avoiding resolving this quintessential state law issue, the court, again, did not

analyze 11 U.S.C. § 502(b). It simply stated, in a footnote, that it had authority "in the interests of justice" to abstain in the context of an objection to a claim. *Id.* at 988. As the court did not consider the issues presented here, *Denton,* like *Bicoastal,* provides scant support for Respondents' assertion that the abstention decision in this case was a "routine, fact-bound application of 'well-settled' legal principles." (Br. in Opp., p. 24).

Finally, the passage quoted as "seminal" by Respondents in *In re Republic Reader's Service, Inc.*, 81 B.R. 422 (Bankr. S.D.Tex. 1987), is, in fact, pure dicta. *Id.* at 426. The bankruptcy court itself stated that the case did not arise in the unique context of the filing of a proof of claim which "invokes the special rules of bankruptcy and is a core proceeding." *Id.* at 429 (citing *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987)). Rather, *Republic* arose in the context of a counterclaim in an adversary proceeding asserting a state law cause of action.[4] *Id.* Such a dispute implicates entirely different legal considerations than those raised by a creditor who has voluntarily and affirmatively placed his claim within the bankruptcy court's expansive equitable power. (*See* Pet., p. 15.) *Republic* thus offers as little support for Respondents' position as do *Bicoastal* and *Denton.*

As set forth above, Respondents' 30 page brief cites three factually distinguishable and legally suspect bankruptcy decisions in support of their assertion that the district court decision in this case was a routine everyday application of well-settled legal principles. This paucity of authority provides compelling proof that, as Petitioner contends, the opposite is true.

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[4] The court did note that even if a proof of claim had been filed, it would not "be reluctant" to "bifurcate the action with liability and damages to be determined in a nonbankruptcy forum and status and enforcement to be left to this court." *Id.* However, as was the case in *Bicoastal* and *Denton,* the court failed to address the statutory mandate of 11 U.S.C. § 502(b).

Without question, the district court erred in its reversal of the bankruptcy court's decision by ruling that the latter had abused its discretion because, pursuant to 11 U.S.C. § 502(b), the bankruptcy court did not have the discretion to abstain from adjudicating the objection to the Goyas' proofs of claim. As a result, the bankruptcy court was prevented from fulfilling its statutory obligation and great prejudice has befallen Petitioner and may befall similarly situated debtors in the future. Thus, the need for the intervention of this Court is apparent.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a writ of certiorari to review the decision of the Court of Appeals for the First Circuit.

Respectfully submitted,

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